



Executive Committee Meeting

**Friday
April 29, 2022
9:00 A.M.**

**1215 K Street, Suite 1650
Sacramento, California 95814**

**Golden State Connect Authority (GSCA)
Executive Committee Meeting
Friday, April 29, 2022 - 9:00 a.m.
1215 K Street, Suite 1650
Sacramento, CA 95814**

In accordance with Government Code section 54953, subdivision (e) (Assembly Bill 361), the April 29, 2022 GSCA Executive Committee Meeting will be facilitated virtually through Zoom with limited in-person attendance. Members of the public may attend the meeting in-person, provided that the GSCA Executive Committee reserve the right to limit the number of people in attendance. Members of the public can also watch or listen to the meeting using one of the following methods:

1. Join the Zoom meeting application on your computer, tablet or smartphone:

Go to: <https://rcrcnet.zoom.us/j/83467893779?from=addon>

Enter Password: 147220

2. Call-in and listen to the meeting:

Dial +1 (669) 900-9128

Enter meeting ID: 834 6789 3779

Enter password: 147220

PUBLIC COMMENT USING ZOOM: Members of the public who join the Zoom meeting, either through the Zoom app or by calling in, will be able to provide live public comment at specific points throughout the meeting.

EMAIL PUBLIC COMMENT: One may also email public comment to mchui@rcrcnet.org before or during the meeting. All emailed public comments will be forwarded to all GSCA Executive Committee members.

DISABLED ACCOMMODATION: Meeting facilities are accessible to persons with disabilities. If you have a disability which requires an accommodation or an alternative means to assist you in attending, observing, or commenting on this meeting, or an alternative agenda document format, please contact GSCA at (916) 447-4806 or by email at mchui@rcrcnet.org by 9:00 a.m. Thursday, April 28th to ensure arrangements for accommodation.

AGENDA

1. Call to Order & Determination of Quorum

Chair, Supervisor Jack Garamendi, Calaveras County

Vice Chair, Supervisor David Griffith, Alpine County

2. Public Comment

At this time any member of the public may address the Board. Speakers are asked to state their name for the record but are not required to do so. Comments are usually limited to no more than 3 minutes per speaker.

3. Consent Agenda – ACTION

a. February 25, 2022 Executive Committee Meeting Minutes

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**b. GSCA Resolution TC004-22: Authorizing Remote and Hybrid
Teleconference Meetings of the GSCA Executive Committee
Pursuant to Assembly Bill 361**

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Arthur J. Wylene, RCRC General Counsel

c. GSCA Budget v. Actual Report (Quarter Ended March 31, 2022) **Page 9**
Lisa McCargar, RCRC Chief Financial Officer

4. Legislative and Regulatory Advocacy Update **Page 13**
Tracy Rhine, RCRC Senior Policy Advocate

5. Initial Project Area(s) Update **Page 179**
Barbara Hayes, RCRC Chief Economic Development Officer
Craig Ferguson, RCRC Senior Vice President

Adjournment

Agenda items will be taken as close as possible to the schedule indicated. Any member of the general public may comment on agenda items at the time of discussion. In order to facilitate public comment, please let staff know if you would like to speak on a specific agenda item. The agenda for this regular meeting of the GSCA Executive Committee was duly posted at its offices, 1215 K Street, Suite 1650, Sacramento, California, 72 hours prior to the meeting.

Any written materials related to an open session item on this agenda that are submitted to the GSCA Executive Committee than 72 hours prior to the meeting, and that are not exempt from disclosure under the Public Records Act, will promptly be made available for public inspection at GSCA's principal office, 1215 K Street, Suite 1650, Sacramento, CA 95814, (916) 447-4806, during normal business hours, and on the GSCA website, <https://www.goldenstateconnect.org>

**Golden State Connect Authority
Executive Committee Meeting
Friday, February 25, 2022 – 9:00 a.m.
1215 K Street, Suite 1650
Sacramento, CA 95814**

Executive Committee Members:

Supervisor Jack Garamendi, Calaveras County
Supervisor David Griffith, Alpine County
Supervisor Dan Miller, Nevada County
Supervisor Doug Teeter, Butte County
Supervisor Chris Lopez, Monterey County
Supervisor Stacy Corless, Mono County

Supervisor Rex Bohn, Humboldt County
Supervisor Aaron Albaugh, Lassen County
Supervisor Denise Carter, Colusa County
Supervisor Miles Menetrey, Mariposa County
Supervisor Daron McDaniel, Merced County

Call to Order and Determination of Quorum

Chair, Supervisor Jack Garamendi, Calaveras County, presided. Present were Executive Director Patrick Blacklock, General Counsel Arthur J. Wylene, and RCRC Director of Board Operations Maggie Chui, clerk. Chair Garamendi called the meeting to order at 9:03 a.m. A quorum was determined at that time. Those members present:

<u>Supervisor</u>	<u>County</u>
Jack Garamendi	Calaveras
David Griffith	Alpine
Doug Teeter	Butte
Stacy Corless	Mono
Rex Bohn	Humboldt
Aaron Albaugh	Lassen
Denise Carter	Colusa
Miles Menetrey	Mariposa

Absent

Dan Miller	Nevada
Chris Lopez	Monterey
Daron McDaniel	Merced

Public Comments

Curtis Bortle shared his support of the efforts being made by GSCA to provide broadband access for all rural Californians.

Consent Agenda

- a. **January 21, 2022 Executive Committee Meeting Minutes**
- b. **GSCA Resolution TC002-22: Authorizing Remote and Hybrid Teleconference Meetings of the GSCA Executive Committee Pursuant to Assembly Bill 361**

Chair, Supervisor Jack Garamendi, Calaveras County, called for approval of the above-listed consent agenda items.

Supervisor Stacy Corless, Mono County, motioned to approve the following: minutes from the January 21, 2022 Executive Committee meeting; and, GSCA Resolution TC001-22. Supervisor Miles Menetrey, Mariposa County, seconded the motion. Motion passed with all Supervisors present voting “Aye” except:

Not Voting: Colusa County

Memorandum of Understanding with Utah Telecommunication Open Infrastructure Agency (UTOPIA) Regarding Development of a Network Administration Agreement

Barbara Hayes, RCRC Chief Economic Development Officer, and Arthur J. Wylene, General Counsel, outlined the memorandum of understanding (MOU) with Utah Telecommunication Open Infrastructure Agency (UTOPIA) regarding development of a network administration agreement. The MOU will formalize interest in employing UTOPIA to provide administrative services for GSCA's proposed broadband networks, establish a framework for developing a potential network administration agreement, and memorializes parties' intent to negotiate in good faith. The MOU outlines specific areas to focus negotiations, and timelines for agreement development.

If approved by the GSCA Executive Committee, the item will be forwarded to the GSCA Board of Directors for consideration at their March 25th meeting. In addition, UTOPIA Board of Directors will consider the item at their meeting in April.

Recommendation

It was recommended that GSCA Executive Committee approve the proposed Memorandum of Understanding with UTOPIA Regarding Development of a Network Administration Agreement.

Supervisor Rex Bohn, Humboldt County, motioned to approve the Memorandum of Understanding with UTOPIA regarding development of a network administration agreement. Supervisor Miles Menetrey, Mariposa County, seconded the motion. Motion passed with all Supervisors present voting “Aye” except:

Not Voting: Colusa County

Lobbying and Advocacy Update

Tracy Rhine, RCRC Senior Policy Advocate, provided a brief update on RCRC's lobbying and advocacy efforts, and the California Public Utilities Commission's rulemaking process.

The legislative bill introduction deadline on February 18th brought a stream of over 600 new bills. Of importance to GSCA, Ms. Rhine noted that there is legislation aimed to make changes to Senate Bill 156, as well as to the California High-Cost Fund A and High-Cost Fund B programs.

Project Area(s) Analysis Update

Barbara Hayes provided an update on work currently underway to arrive toward identification and implementation of initial demonstration project area(s). The selection of project area(s) falls within a larger process that include: Step One) identify financial model and assemble financial expertise; Step Two) identify initial project area(s); and, Step Three) final financial review and project structuring.

Thus far, Step One has been completed, and Step Two is nearing completion. Foundational assumptions are being developed that will aid in completion of Step Three. Ms. Hayes noted that good progress is being made as GSCA moves forward.

Project Calendar

Barbara Hayes discussed the project calendar and timeline of GSCA's development and deployment of broadband infrastructure. The key components contained in the project calendar include: broadband strategic plan development; lobbying and advocacy; project area progression; financing; contractor ramp-up; design/final engineering; marketing/sales; and, construction.

Craig Ferguson, RCRC Senior Vice President, explained the conduit debt financing to finance GSCA's projects.

Golden State Connect Authority Branding & Website

Carolyn Jhaji, Communications Director, presented GSCA's branding and website development, and unveiled the new logo, draft website, and key messaging.

The GSCA Executive Committee discussed GSCA's key messaging approach, inquiring how "quality" and "equity" will be assessed. The GSCA Executive Committee were informed that the website will launch next week, and they provided suggestions to the website.

Adjournment

Chair, Supervisor Jack Garamendi, Calaveras County, adjourned the meeting of the GSCA Executive Committee at 10:21 a.m.



To: Members of the GSCA Executive Committee

From: Arthur J. Wylene, RCRC General Counsel

Date: April 19, 2022

Re: GSCA Resolution TC004-22: Authorizing Remote and Hybrid Teleconference Meetings of the GSCA Executive Committee Pursuant to Assembly Bill 361 – **ACTION**

Summary

The proposed resolution will allow the current GSCA Executive Committee meeting to be held primarily in-person at the RCRC offices, while still permitting full remote participation for those members who are unable to attend in person, or prefer to participate virtually.

Background

Meetings of the GSCA Executive Committee are subject to the provisions of the Ralph M. Brown Act. The Brown Act has traditionally placed significant restrictions on teleconferenced meetings, including requiring that each teleconference location be accessible to the public (i.e., participation of Executive Committee members from homes or private offices has not been permitted).

In the early days of the COVID-19 pandemic, the Governor issued a series of Executive Orders temporarily suspending the restrictions on teleconferenced meetings, under which most meetings of RCRC-affiliated legislative bodies have been conducted during the last year-and-a-half. These Executive Orders terminated on September 30, 2021. In their place, the Legislature has enacted Assembly Bill 361 (R. Rivas), which permits legislative bodies to continue holding teleconferenced meetings without the traditional Brown Act restrictions (through December 2023) under any of the following circumstances:

- (A) The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.*
- (B) The legislative body holds a meeting during a proclaimed state of emergency for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.*
- (C) The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote, pursuant to subparagraph (B), that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.*

To continue holding teleconferenced meetings in the manner to which Executive Committee members have become accustomed, each RCRC-affiliated legislative body will need to make one of the determinations required by Assembly Bill 361. The "imminent

risk” determinations are factually supportable, as the continued rates of transmission of the COVID-19 virus, including the Omicron variant, can indeed present imminent risks to the health and safety of some in-person attendees, particularly those with pre-existing health conditions.

If the proposed resolution making these determinations is approved, the current GSCA Executive Committee meeting may be held as a remote and hybrid in-person/remote meeting, in substantially the same manner as previous meetings during the past 18 months. (Assembly Bill 361 includes several additional requirements for teleconferenced meetings, including providing an opportunity for “real time” public comment, and suspending the meeting in the event that remote connectivity is lost; however, these are all consistent with RCRC's existing practices.)

Assembly Bill 361 generally requires that the requisite determinations must be reconsidered every thirty days. Since GSCA Executive Committee meetings typically will not occur that frequently, a new resolution making these determinations will be required at the start of each meeting.

Recommendation

It is recommended that proposed Resolution Authorizing Remote and Hybrid Teleconference Meetings of the GSCA Executive Committee Pursuant to Assembly Bill 361 be approved.

Attachment

- Proposed GSCA Resolution TC004-22

GSCA RESOLUTION NO. TC004-22

RESOLUTION OF THE EXECUTIVE COMMITTEE OF THE GOLDEN STATE CONNECT AUTHORITY AUTHORIZING REMOTE AND HYBRID TELECONFERENCE MEETINGS OF THE GSCA EXECUTIVE COMMITTEE PURSUANT TO ASSEMBLY BILL 361

WHEREAS, Golden State Connect Authority (GSCA) is committed to preserving and nurturing public access and participation in meetings of GSCA's legislative bodies; and

WHEREAS, the Brown Act, Government Code section 54953, subdivision (e), makes provisions for remote teleconferencing participation in meetings by members of a legislative body, without compliance with the requirements of Government Code section 54953, subdivision (b)(3), subject to the existence of certain conditions; and

WHEREAS, a required condition is that a state of emergency is declared by the Governor pursuant to Government Code section 8625, proclaiming the existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by conditions as described in Government Code section 8558; and

WHEREAS, on March 4, 2020, the Governor proclaimed pursuant to his authority under the California Emergency Services Act, California Government Code section 8625, that a state of emergency exists with regard to a novel coronavirus (a disease now known as COVID-19); and

WHEREAS, on June 4, 2021, the Governor clarified that the "reopening" of California on June 15, 2021 did not include any change to the proclaimed state of emergency or the powers exercised thereunder; and

WHEREAS, as of the date of this Resolution, neither the Governor nor the Legislature have exercised their respective powers pursuant to California Government Code section 8629 to lift the state of emergency either by proclamation or by concurrent resolution in the state Legislature;

WHEREAS, the continued rates of transmission of the virus and variants causing COVID-19 within GSCA member counties are such that meeting in person would present imminent risks to the health or safety of some attendees of public meetings, particularly those with pre-existing health conditions; and

WHEREAS, the Executive Committee has considered the current circumstances of the state of emergency, and determined that the state of emergency continues to directly impact the ability of the members to meet safely in person;

NOW, THEREFORE, BE IT RESOLVED by the Executive Committee of the Golden State Connect Authority as follows:

1. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.
2. A proclaimed state of emergency exists and as a result of the emergency, meeting in person would present imminent risks to the health or safety of some attendees, particularly those with pre-existing health conditions.
3. The Executive Committee is hereby authorized and directed to conduct open and public meetings in accordance with Government Code section 54953, subdivision (e) and other applicable provisions of the Brown Act.
4. This Resolution is intended to enable the Executive Committee to meet via teleconference in accordance with Assembly Bill 361 of 2021 (Statutes 2021, Chapter 165), whether solely by teleconference or via a "hybrid" combination of physical location and teleconference.
5. This Resolution shall take effect immediately upon its adoption and shall be effective for a period of thirty (30) days thereafter, unless extended pursuant to Government Code section 54953, subdivision (e)(3). Expiration of this resolution shall not prejudice any subsequent action to adopt another resolution in accordance with Government Code section 54953, subdivision (e) during the present or any future state of emergency.

PASSED, APPROVED AND ADOPTED by the Executive Committee of the Golden State Connect Authority, the 29th day of April 2022.

I certify that the foregoing resolution is a true and accurate copy of Resolution TC004-22, approved by the Executive Committee of the Golden State Connect Authority on April 29, 2022 in Sacramento, California.

Date: _____

Secretary



To: Members of the GSCA Executive Committee
From: Lisa McCargar, Chief Financial Officer
Date: April 19, 2022
Re: GSCA Budget v. Actual Report (Quarter Ended March 31, 2022)

Summary

The Statement of Revenues and Expenses for GSCA provides a budget to actual comparison for the quarter ended March 31, 2022.

GSCA adopted its first budget in 2022 following the entity's formation in 2021. As such, both budgeted and actual activity is minimal and in line with expectations. There have been no consultant expenditures incurred through March 2022; hence the expenditure is favorable. The corresponding revenue variance results from the fact that RCRC has not "donated" the funds to cover expenses and will only do so once expenditures occur. The net impact is a net zero budget v. actual result.

Attachment

- GSFA Statement of Revenues and Expenses, Budget vs. Actual, for the Quarter Ended March 31, 2022.

Golden State Connect Authority
BUDGET vs ACTUAL
For the Quarter Ended
March 31, 2022

	2022 ANNUAL Budget	March Only 2022 Budget	March Only 2022 Actual	March Only Variance Favor/(Unfav)	YTD Budget March 2022	YTD Actual March 2022	YTD 2022 Variance Favor/(Unfav)
Revenue:							
Contract Support Services:							
GSFA	\$ 203,900	\$ 16,992	\$ 15,325	\$ (1,667)	\$ 50,975	\$ 45,975	\$ (5,000)
Interest Income	-	-	-	-	-	-	-
Investment Gain / (Loss)	-	-	-	-	-	-	-
Total Revenue	\$ 203,900	\$ 16,992	\$ 15,325	\$ (1,667)	\$ 50,975	\$ 45,975	\$ (5,000)
Expenditures:							
Consultants	\$ 20,000	\$ 1,667	\$ -	\$ 1,667	\$ 5,000	\$ -	\$ 5,000
Contract Service Fee - RCRC	183,900	15,325	15,325	-	45,975	45,975	-
Total Expenditures	\$ 203,900	\$ 16,992	\$ 15,325	\$ 1,667	\$ 50,975	\$ 45,975	\$ 5,000
Net Revenue Over Expenditures	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -



To: Members of the GSCA Board of Directors
From: Tracy Rhine, Senior Policy Advocate
Date: April 25, 2022
Re: Legislative and Regulatory Advocacy Update

Summary

This memo provides an overview of RCRC’s lobbying and advocacy efforts related to California Public Utilities Commission (CPUC) Proceedings affecting broadband deployment in GSCA member counties.

Background

Last year Governor Newsom signed into law Senate Bill 156 (Chapter 112, Statutes of 2021) and Assembly Bill 164 (Budget Act of 2021) which allocated \$6 billion for broadband infrastructure. In addition to making changes to existing broadband funding programs, the legislation provided:

- \$3.25 billion to construct a statewide open-access middle mile network
- \$2 billion in federal funding account for a last mile connection (FFA)
- \$50 million for local agency technical assistance (LATA)
- \$750 million for a loan loss reserve fund (LLR)

The CPUC is utilizing two established rulemakings to implement the funding programs set forth in statute: Revisions to the California Advanced Services Fund (R. 20-08-021) and the Broadband Infrastructure Deployment rulemaking (R. 20-09-001).

Issue

On March 2, 2022, as part of the Broadband Infrastructure Deployment Proceeding, the CPUC released its initial Proposed Decision (PD) on the FFA last mile program. As set forth in statute, the FFA is a \$2 billion grant program to provide last mile broadband infrastructure funding to unserved and underserved communities. Statute requires that \$1 billion of the American Rescue Plan Act (ARPA) monies be allocated to “urban counties” and \$1 billion to “rural counties.”

In response to the PD, RCRC submitted opening comments on March 22nd, proposing a methodology for defining “Urban” and “Rural” for the purpose of funding distribution that would have ensured that the larger RCRC member counties received an equitable share of the urban allocation. However, the CPUC rejected RCRC suggested methodology and instead adopted a proposal that establishes 27 rural counties and 31 urban counties, with twelve RCRC member counties falling into the urban category.

The PD and accompanying program guidelines outline the structure of the grant program, which will provide reimbursement for broadband deployment projects in specified

unserved and underserved areas of the state. In addition to opposing the proposed distribution methodology, RCRC requested that the CPUC amend its PD to expressly exempt public agencies from obtaining a Certificate of Public Convenience and Necessity (CPCN) and Letter of Credit. Further, RCRC advocated for ensuring that all applications, irrespective of approval process (ministerial staff review or full commission resolution), be evaluated holistically, to ensure that the limited per-jurisdiction funding is allocated to projects with the highest merit scores, based on the outlined scoring rubric included in the PD.

A revised PD was released ahead of the April 7th CPUC meeting, which addressed several of RCRC concerns. Specifically, the CPUC exempted local and tribal government applicants from the Letter of Credit requirement and made clear that applications would be reviewed through a “funding round” process which allows applications to be holistically assessed on a per-county basis. Because distribution is based on county jurisdictional boundaries, the revised PD requires counties with applications from multiple entities to be reviewed through the CPUC resolution process, thereby ensuring that those applications eligible for expedited ministerial review are not approved prior to evaluating other eligible projects in that same county, including those applications requiring full Commission approval. This prevents depletion of a jurisdictional allocation by smaller, less costly builds, which could leave the hardest to service, and most expensive projects with a fraction of the funding allocation - essentially rendering these projects infeasible.

The revised PD also incorporated affordability requirements, including mandating that applicants provide at least one low-cost program that provides service speeds adequate to concurrently telework and participate in remote schooling, for a cost of no more than \$40 a month. Additionally, under the revised PD, service providers had to deliver internet service at the costs outlined in its grant application, for a ten-year period, unless an increase in rate was approved by the CPUC.

In response to concerns voiced by several Legislators that the affordability requirements were overly burdensome, the CPUC tabled discussion on the revised PD at its April 7th meeting. The Commission subsequently issued, discussed, and adopted a modified proposal that lowered the pricing cap commitment to five years, allowing for Consumer Price Index adjustment, and eliminated the requirement for a low-cost service offering beyond participation in the federal Affordable Connectivity Program. However, the adopted Decision incentivizes affordable internet connectivity service by adding preference points as part of the scoring assessment to those applicants that provide an affordable offering (not based on income) and commit to a ten-year service price cap. Further, the Decisions empowers staff to recommend that the Commission reduce an award amount if the proposed project does not offer a sufficient public benefit.

With the FFA Decision adopted, the CPUC must now determine and publish “priority areas” that represent eligible project areas within each county.

Revisions to CASF and Implementation of the Broadband Loan Loss Reserve Fund

On March 1, 2022, the CPUC released a Second Amended Scoping Memo and Ruling which included proposed rule modifications for funding accounts within the CASF program and questions for comment on the Broadband LLR program. The changes to the Adoption Account, Consortia Account and Public Housing Account are Phase IIB of the

CASF proceeding and the development of the LLR rules will be established through Phase IIA.

On April 1st, RCRC submitted opening comments to the CPUC on Phase IIA, the Broadband LLR program. A staff proposal outlining draft program guidelines is expected before August 2022.

Staff Recommendation

Information only. RCRC staff will continue to engage in broadband related Proceedings at the CPUC and update the GSCA membership as appropriate.

Attachments

- Federal Funding Account Program Decision (D. 22-04-055)
- RCRC Opening Comments on Phase IIA, LLR (R. 20-08-021)

Decision 22-04-055 April 21, 2022

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking
Regarding Broadband Infrastructure
Deployment and to Support Service
Providers in the State of California.

Rulemaking 20-09-001

DECISION ADOPTING FEDERAL FUNDING ACCOUNT RULES

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Appendix A - Revised Federal Funding Account Grant Program Rules

DECISION ADOPTING FEDERAL FUNDING ACCOUNT RULES

Summary

This decision adopts rules for the Federal Funding Account (FFA) created by Senate Bill (SB) 156 and funded through the federal American Rescue Plan Act of 2021 (Public Law No. 117-2), and the rules issued by the U.S. Treasury Department. The FFA is a new two-billion-dollar grant program focused on building broadband Internet infrastructure to communities without access to Internet service at sufficient and reliable speeds. The rules adopted in this decision include, among other items, the following subjects: project eligibility, application objections, allocating FFA funding between rural and urban counties, reimbursing grantees, a ministerial review process whereby Communications Division Staff may approve certain projects, and minimum performance standards for grantees.

This proceeding remains open.

1. Factual and Procedural Background

The California Public Utilities Commission (Commission) initiated the Broadband for All proceeding to set the strategic direction and changes necessary to expeditiously deploy reliable, fast, and affordable broadband Internet access services that connect all Californians.

1.1. Procedural Background

Governor Gavin Newsom issued Executive Order N-73-20 on August 14, 2020, directing state agencies to accomplish 15 specific actions to help bridge the digital divide, including ordering state agencies to pursue a minimum broadband speed goal of 100 Mbps download to guide infrastructure investments and program implementation to benefit all Californians.

On September 10, 2020, this Commission opened this Rulemaking to set the strategic direction and make the changes necessary to expeditiously deploy reliable, fast, and affordable broadband Internet access services that connect all Californians. As stated above, this proceeding will explore near-term and medium-term actions to achieve this goal.

A prehearing conference (PHC) was held on November 10, 2020, to discuss the issues of law and fact, determine the need for hearing, set the schedule for resolving the matter, and address other matters, as necessary.

On December 28, 2020, the assigned Commissioner issued a Scoping Memorandum and Ruling (Scoping Memo) that divided this proceeding into three phases.

On March 11, 2021, President Biden signed into law the American Rescue Plan Act of 2021 (ARPA),¹ also called the COVID-19 Stimulus Package or American Rescue Plan, which appropriated funds for states to deploy last-mile broadband Internet networks. This law requires funds be expended by the end of 2024 and projects to be completed by the end of 2026.

On July 20, 2021, Governor Newsom signed SB 156 into law, creating the Federal Funding Account,² with this Commission being responsible for implementing the new grant program. The Second Amended Scoping Memorandum and Ruling, (Second Amended Scoping Memo) in the instant proceeding, issued on August 2, 2021, adds certain issues associated with the

¹ Public Law No. 117-2.

² SB 156, An act to amend Sections 6547.7 and 53167 of, to add Section 26231 to, and to add Chapter 5.8 (commencing with Section 11549.50) to Part 1 of Division 3 of Title 2 of, the Government Code, to add Section 21080.51 to the Public Resources Code, and to amend Sections 281, 912.2, and 914.7 of, and to add Section 281.2 to, the Public Utilities Code.

implementation of SB 156 to the scope of this proceeding, including implementation of the Federal Funding Account in Phase III.

On September 23, 2021, the Assigned Commissioner issued a ruling requesting comment on a Staff Proposal for the rules that would implement the Federal Funding Account grant program (ACR). On October 29, 2021, the following parties filed and served comments on this proposal: AARP California (AARP); Pacific Bell Telephone Company dba AT&T California (AT&T); Borrego Springs Revitalization Committee; Central Coast Broadband Consortium (CCBC); California Cable and Telecommunications Association (CCTA); Corporation for Education Network Initiatives In California (CENIC); California Emerging Technology Fund (CETF); Center for Accessible Technology (CforAT); City and County of San Francisco (San Francisco); Coachella Valley Association of Governments (CVAG); Comcast Phone of California, LLC (Comcast); County of Los Angeles; County of Santa Clara (Santa Clara); Communications Workers of America, District 9 (CWA); Frederick L. Pilot; Frontier Communications of the Southwest Inc., Frontier California Inc., and Citizens Telecommunications Company of California Inc. (Frontier); Geolinks; Greenlining Institute; Joint Wireless Internet Service Providers (WISPs);³ Los Angeles County Economic Development Corporation (LAEDC); Next Century Cities (NCC); National Diversity Coalition (NDC); The Public Advocates Office at the California Public Utilities Commission (Cal Advocates); Rural County Representatives of California (RCRC); San Diego Association of Governments (SANDAG) Small Business Utility Advocates (SBUA); Southern California Association of Governments (SCAG); Southern California Edison Company (SCE); San Diego

³ DigitalPath, Inc. (U 1151 C), Cal.net, Inc. (U 7309 C), ShastaBeam, Etheric Communications, LLC, Velocity Communications, Inc. (U 1653 C) and Jefferson State Broadband d/b/a Com-Pair

Gas & Electric Company (SDG&E); Small Local Exchange Carriers (LECs);⁴ LCB Communications LLC and South Valley Internet (LCB Communications and South Valley Internet); The Utility Reform Network (TURN); UNITE-LA; and Cellco Partnership (U 3001 C) and MCImetro Access Transmission Services LLC (U 5253 C) (collectively, "Verizon").

On November 15, 2021, the following parties filed and served reply comments to this proposal: AARP; AT&T; CCTA; CENIC; CETF; CforAT; Frederick L Pilot; Frontier; Geolinks; Mono County; NDC; Cal Advocates; SBUA; SCE; Small LECs; TURN; Utility Consumers' Action Network (UCAN); and Verizon.

On November 10, 2021, the assigned ALJ issued a ruling requesting comment on the proposed apportionment of funds for the Federal Funding Account grant program. The following parties filed and served comments on November 30, 2021: County of Los Angeles; RCRC; Small LECs; CCTA; SANDAG; County of Santa Clara; TURN; UNITE-LA, Inc; CETF; SBUA; LAEDC; County of Mendocino; NDC; UCAN; North Bay North Coast Broadband Consortium; The #OaklandUndivided Coalition; SCAG; and Frederick L. Pilot.

On December 10, 2021, the following parties filed and served reply comments: UCAN; San Francisco; Cal Advocates; NDC; SBUA; TURN; North Bay North Coast Broadband Consortium; CCTA; Central Coast Broadband Consortium; and CETF.

⁴ The Siskiyou Telephone Company, Volcano Telephone Company, Foresthill Telephone Co. The Ponderosa Telephone Co., Winterhaven Telephone Company, Calaveras Telephone Company, Happy Valley Telephone Company, Ducor Telephone Company, Pinnacles Telephone Co., Cal-Ore Telephone Co., Sierra Telephone Company, Inc., Hornitos Telephone Company, Kerman Telephone Co.

1.2. Factual Background

Communities across California face a multitude of barriers for the deployment of resilient and accessible broadband networks. Broadband Internet access and service in urban communities varies by neighborhood. Rural areas of the state often lack the infrastructure for sufficient wireline and wireless broadband Internet access service. The COVID-19 pandemic has highlighted the extent to which broadband access is essential for public safety, public health and welfare, education, and economic resilience, adding greater urgency to developing new strategies and expand on existing successful measures to deploy reliable networks with affordable service.

2. Jurisdiction

Among other items, SB 156 requires the Commission to implement a program (Program) using federal funds to connect unserved and underserved communities by applicable federal deadlines. The Program must be consistent with Part 35 of Title 31 of the Code of Federal Regulations (CFR) and any conditions or guidelines applicable to this one-time federal infrastructure funds.

The enacted California 2021-2022 Budget allocates two billion dollars (\$2,000,000,000) to the Program to fund the deployment of last-mile broadband infrastructure.⁵ By June 30, 2023, the Commission must allocate one billion dollars (\$1,000,000,000) in urban counties and one billion dollars (\$1,000,000,000) in rural counties.⁶ The Commission must initially allocate five million dollars (\$5,000,000) in each county.⁷ The Commission must allocate the remaining funds

⁵ See California 2021-2022 Enacted Budget Summary at page 27, available at <http://ebudget.ca.gov/2021-22/pdf/Enacted/BudgetSummary/FullBudgetSummary.pdf>

⁶ See Public Utilities Code Section 281(n)(3).

⁷ *Id.*

based on each county's proportionate share of households without access to broadband Internet access service with at least 100 megabits per second (Mbps) download speeds.⁸

The Secretary of the U.S. Treasury Department (Treasury) issued an Interim Final Rule (Interim Final Rule), effective May 17, 2021, to implement the Coronavirus State Fiscal Recovery Fund (SLFRF) established under the American Rescue Plan Act.⁹ Treasury also issued a SLFRF Frequently Asked Questions (FAQ) document to provide additional guidance on how funds should be utilized.¹⁰ Treasury issued its Final Rule (Final Rule) on January 6, 2022,¹¹ adopting many of the provisions in the Interim Final Rule, with some amendments. The Final Rule is effective April 1, 2022.

3. Issues Before the Commission

The Second Amended Scoping Memo adds a new Phase III to this proceeding. Phase III includes two separate tasks: 1) the collection of public comments that will assist with the development of the locations for the statewide open-access middle mile network; and 2) the adoption of rules for the Federal Funding Account. The scope of this decision is the development of the rules governing the Federal Funding Account (FFA), focused on last-mile Internet connections, including whether the Commission should adopt the Staff Proposal or refine it. Additionally, the September 23, 2021 ACR asked for comment on the questions and issues discussed below:

⁸ See Public Utilities Code Section 281(n)(3)(B)(ii) ("as identified and validated by the Commission, pursuant to the most recent broadband data collection, as of July 1, 2021...").

⁹ The Interim Rule is available at: <https://www.govinfo.gov/content/pkg/FR-2021-05-17/pdf/2021-10283.pdf>.

¹⁰ The FAQ is available here: <https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf>.

¹¹ See 87 Fed. Reg. 4338-4454 (January 27, 2022).

1. Compliance with Federal Guidance: SB 156 requires the Commission to adopt program rules that are consistent with Part 35 of Title 31 of the CFRs.
 - Are the rules in the Staff Proposal consistent with Part 35 of Title 31 of the CFRs?
 - What modifications should be made to the Staff Proposal to improve consistency with Part 35 of Title 31 of the CFRs? Please provide an explanation of any suggestions, as well as edits in redline as an attachment to your comments.
2. Priority Project Areas: The Staff Proposal envisions that Communications Division (CD) Staff will publish proposed priority project areas that are coordinated with the Commission's obligation to assist in preparing definitive plans for deploying necessary infrastructure in each county, including coordination across contiguous counties. FFA Applicants will apply for grants to offer broadband Internet service to these defined areas.
 - What information should the CD Staff take into consideration in developing these priority areas?
 - Do the criteria in "Section 12. Application Objections" balance the need to ensure a fair process for an Internet service provider asserting it already serves a proposed priority project area, with the need to award grants in an expeditious manner? Do parties propose additional or different criteria?
3. Coordination with other Grant Programs: There is significant funding available and being considered at the state and federal levels for broadband infrastructure.
 - How can the FFA best coordinate and leverage these other broadband infrastructure funds?
4. Affordability: The Interim Rule encourages recipients to consider ways to integrate affordability options into their program design.
 - How should the Commission define affordability?

- How should the Commission consider a preference or requirement for affordable offers that are not income-qualified?
 - Should the Commission consider other low-income preferences or requirements as a percentage of the Federal Poverty Level? Or categorical eligibility such as any service connection in a Qualified Census Tract?
 - How should the Commission consider low-income or affordable offers that allow for enrollment based on participation in any California public assistance program?
 - What should be the term for which an affordable or low-income offer is provided and what is the rationale for the term?
 - Is it reasonable to require applicants provide Lifeline¹² services, as well as the Emergency Broadband Benefit, or its successor?
5. Eligible Areas: The Staff Proposal directs the focus of last mile projects to be in unserved areas that lack access to a wireline connection capable of reliably delivering at least minimum speeds of 25 Mbps download and 3 Mbps upload.
- How should the Commission consider eligible areas?
 - How should underserved areas be defined and considered?
 - What criteria should the Commission use to determine if an area has reliable service?
 - How should the Commission measure what constitutes a significant number of unserved and underserved households?

¹² Note we refer to the “California LifeLine Program” either as the California LifeLine Program or as “LifeLine,” while the federal program is referred to as Lifeline.

6. Eligible Entities: The Staff Proposal lists eligible entities (see related questions under the IOU Broadband Pilots section of the ruling).
 - What information should the Commission consider in the rules to allow flexibility to enable partnerships between entities and providers? For example, a public entity and one or more broadband service providers.
7. Coordination with Statewide Middle Mile Network: SB 156 also creates a statewide middle mile network that must enable last mile connections.
 - How can the Commission ensure the FFA grants coordinate and take advantage of the statewide middle mile network that is being built?
8. IOU Broadband Pilots: Phase II in this proceeding seeks to identify a role for the electric Investor-Owned Utilities (IOUs) in deploying broadband Internet access service.
 - How can the FFA be utilized to achieve this objective?
 - Should the IOU Fiber Pilots in Phase II be moved into Phase III?
 - How should the Commission consider changes to add flexibility to the rules to facilitate applicants from multiple entities such as partnerships between multiple last mile providers or a middle mile applicant such as an IOU and a last mile provider?
 - How should the Commission consider or identify IOU rights-of-way that would enable last mile connections and work to fund or effectuate deployment in those IOU rights of way even without an IOU and last mile provider partnership?
9. Performance Criteria: Federal SLFRF funds must be obligated between March 3, 2021 and December 31, 2024 and expended to cover such obligations by December 31, 2026.
 - What changes should the Commission consider to the performance criteria to meet the December 31, 2024

obligation or encumbrance and December 31, 2026 expenditure deadlines?

- How should the Commission measure the serviceable life of the infrastructure? (Section 6.6 of the Staff Proposal)

10. Information Required from Applicants: Treasury published guidance¹³ on federal SLFRF subaward (grantee) reporting.

- What changes should the Commission consider to the Information Required from Applicants or Semi-Annual and Completion Reporting to better capture and provide information pursuant to the Treasury guidance?

11. Provision of voice and other services: The Interim Final Rule considers a connection that can “originate and receive high-quality voice, data, graphics, and video telecommunications.”¹⁴

- How should the Commission consider Applicants which propose to provide voice service or other services?
- What is the industry standard approach to providing this service in a safe and reliable manner?

12. Government and Community Support: Applicants must provide letters indicating government or community support.

- How should the Commission consider the requirement for applicants to address how a proposed application furthers the purpose of a Local Government or Tribal

¹³ Treasury, Compliance and Reporting Guidance State and Local Fiscal Recovery Funds (June 24, 2021 Version 1.1), available at

<https://home.treasury.gov/system/files/136/SLFRF-Compliance-and-Reporting-Guidance.pdf>

¹⁴ Department of the Treasury, Coronavirus State and Local Fiscal Recovery Funds, Interim Final Rule, 86 Fed. Reg. 26805 (May 17, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-05-17/pdf/2021-10283.pdf>

technical assistance grant in project areas for which a grant has been awarded?

13. Ministerial review criteria and cutoff: Section 13 outlines criteria for a project to be eligible for ministerial review.

- What other criteria or range of funding should the Commission consider? For example, should the project amount for ministerial review be some amount between \$10-30 million? How should the per location cost criteria be modified and how should this per location cost be considered?

14. Post-Construction Phase: For what time period should after construction requirements remain in place?

- How should the Commission consider post-construction requirements and/or reporting for a period of time? What should they be? How long should the Commission require these requirements and why? For example, the current draft includes notification requirements about potential transfers of control for three years.

4. Eligible Areas

Consistent with federal rules, the ACR proposes to define eligible areas as locations (households and businesses)¹⁵ that lack access to a wireline Internet service connection capable of reliably¹⁶ delivering minimum speeds of 25 Mbps download and 3 Mbps upload.

¹⁵ The term “business” includes non-residential users of broadband, such as private businesses and institutions that serve the public, such as schools, libraries, healthcare facilities, and public safety organizations.

¹⁶ The use of “reliably” in the Interim Final Rule provides significant discretion to assess whether the households and businesses in the area to be served by a project have access to wireline broadband service that can consistently meet the specified thresholds of at least 25Mbps/3Mbps – i.e., to consider the actual experience of current wireline broadband customers that subscribe to services at or above the 25 Mbps/3 Mbps threshold. Whether there is a provider serving the area that advertises or otherwise claims to offer speeds that meet the 25 Mbps download and 3 Mbps upload speed thresholds is not dispositive.

When making these assessments, applicants may choose to consider any available data, including but not limited to documentation of existing service performance, federal and/or state-collected broadband data, user speed test results, interviews with residents and business owners, and any other information they deem relevant. In evaluating such data, applicants may take into account a variety of factors, including whether users receive service at or above the speed thresholds at all hours of the day, whether factors other than speed such as latency or jitter, or deterioration of the existing connections make the user experience unreliable, and whether the existing service is being delivered by legacy technologies, such as copper telephone lines (typically using Digital Subscriber Line technology) or early versions of cable system technology (DOCSIS 2.0 or earlier).

The ACR asks:

- How should the Commission consider eligible areas?
- How should underserved areas be defined and considered?
- What criteria should the Commission use to determine if an area has reliable service?
- How should the Commission measure what constitutes a significant number of unserved and underserved households?

4.1. Party Positions

There is a lack of consensus among parties regarding how the Commission should determine if an area is eligible for FFA grants and how the Commission should interpret federal rules that give it broad discretion. Some parties support the proposed rules in the ACR. Others oppose the proposed rules, or even disagree with federal rules, either the Interim rule or the Final Rule. Many parties recommend revisions to the proposed rules.

Parties propose several alternative methods by which the Commission should determine if an area is eligible for a FFA grant. AARP, LAEDC, RCRC, and Comcast support relying on the 25/3 Mbps speed threshold. Cal Advocates recommends defining unserved areas as areas without reliable access to Internet service at 25/3 Mbps. TURN, RCRC, and CCTA specifically support a blanket determination that wireline Internet service is reliable. Frederick L. Pilot suggests that all areas lacking last-mile fiber Internet service should be eligible for FFA grants, with the Commission adopting a rebuttable presumption that most areas outside heavily urban locations do not have last-mile fiber. Joint WISPs support relying on the 25/3 Mbps speed threshold to determine eligibility, but also note that the proposal ignores locations with existing fixed wireless service, including Commission-approved CASF projects.

Coachella Valley Association of Governments (CVAG) asserts that eligible areas should be defined as those without access to 100 Mbps and that “underserved” areas should be defined as those areas that have less than three service providers that do not provide wireline service at speeds of 100 Mbps. NDC proposes defining “unserved” areas as not having any 25/3 Mbps minimum service available and “underserved” areas as not having affordable 25/3 Mbps minimum service available. SANDAG recommends using a 100/20 Mbps threshold to determine unserved versus underserved areas. UNITE-LA recommends considering underserved areas as areas where a large portion of households that do not have broadband Internet service. In determining eligibility, CforAT asserts the Commission should avoid defining “unserved or underserved” as a specific percentage threshold and should instead evaluate specific areas on a case-by-case basis and consider any available information about delivered speeds that are lower than advertised speeds,

without setting a statistical mandate on what must be provided. RCRC opposes using separate definitions for unserved and underserved. Joint WISPs recommend defining an area as underserved or unserved only if more than half, and preferably 75 percent or more of the households in the area do not have access to the minimum speeds associated with the definitions of unserved or underserved. NDC recommends the Commission distinguish between “unserved” and “underserved” areas and to not use the terms interchangeably, as done in the IFR.

AT&T and CETF support prohibiting FFA grants in areas where an ISP (fixed or mobile) must deploy broadband as part of a merger commitment.¹⁷

Cal Advocates, CCTA and Joint WISPs assert that in instances where an application proposes to deploy infrastructure in mostly served areas, the Commission should pro-rate funding so that the FFA grant is mostly funding unserved households. South Valley Internet urges the Commission to allow projects that surround wider area than unserved if it is necessary to make a project more economic.

Parties also disagree on how the Commission should determine if existing service is reliable. Borrego Springs Revitalization Committee asserts the Commission must account for reliability when determining if an area is unserved. CforAT argues the Commission should not take ISPs’ claims of service at face value, as some state terms of service in a manner that does not guarantee that service (*e.g.*, speeds delivered up to a specific amount), and instead adopt an expansive definition of what areas are eligible for FFA grants, since the proposed rules allow for parties to object to specific applications. TURN proposes

¹⁷ Per Pub. Util. Code §§ 851 and 854, the Commission approves transfers of control of public utilities, including many licensed telecommunications service providers in California.

reviewing an ISP's ability to meet service quality standards in GO 133-D to determine reliability. NDC supports using the factors set out in FAQ 6.11, but also advise using customer complaints about outages, slower speeds than advertised, billing and related complaints. Santa Clara County recommends the Commission use retail service reports made by a "primary wireline provider" and exclude all reports by wholesale/secondary wireline providers, including middle mile providers. Joint WISPs oppose measuring reliable service using CalSPEED, asserts the application measures what speed a customer subscribes to, not what is available. LAEDC suggests the Commission establish a forum to collect first-hand experience from residents, as there often is a disconnect between what providers say and customers experience and collect granular data as lack of publicly available data is limiting and prevents decision-making. SBUA proposes monitoring performance metrics, such as System Average Interruption Frequency Index, System Average Interruption Duration Index, and the Momentary Average Interruption Frequency Index, as well as customer-centric indices such Customers Experiencing Long Interruption Durations, Customers Experiencing Multiple Interruptions, Customers Experiencing Multiple Momentary interruptions, and the Customers Experiencing Multiple Sustained Interruptions and Momentary Interruptions Events index provides an overall performance indicator.

Comcast, Joint WISPs, Geolinks, and CCTA argue the proposed rules would allocate funds to served areas, at odds with FFA and CASF program goals of building infrastructure to connect households that are truly unserved. San Francisco asserts the proposed eligibility requirements are contrary to Treasury's guidance and could exclude prematurely areas that deserve support. Comcast also argues that SB 156 does not empower or require the Commission to

determine reliability of service in specific areas, and the FFA can meet federal guidelines by focusing on whether areas have speeds of 25/3. Comcast also contends that the CASF program does not include staff's subjective determination of whether an area has "reliable" service and that if this determination is warranted, the Commission should examine RDOF tiers of service for guidance. Comcast asserts SB 156 does not call for a measurement of what constitutes a significant number of unserved and underserved households, but instead requires a proportional distribution of funds based on share of households without broadband access to at least 100 Mbps, and that the definition of "Eligible Project" should be modified to remove the "a significant number of" modifier because SB 156 has no such qualifier for FFA eligibility.

CETF strongly disagrees with CCTA's claims that the Staff Proposal is "biased toward funding 'served' households" and constitutes "overbuilding," noting "as set forth below, that the Staff Proposal definition of an "eligible project" does require "significant" unserved and underserved households to be served in an eligible project.

Frontier urges the Commission to not adopt expansive rules addressing eligible areas, and instead focus on applications that will serve either unserved or underserved locations.

CVAG recommends determining reliable service using a map of existing infrastructure and the capabilities of it complemented by speed test data and use data on service quality, such as complaints. San Francisco also argues that the Commission should not rely solely on the Broadband Map to determine eligibility, that the Commission should not place the burden on applicants to dispute the Broadband Map, and that applicants should be allowed to

demonstrate that any areas they are proposing to serve are eligible and to supply any available supporting data.

Parties also do not agree on how the Commission should define or measure what constitutes a “significant” number of unserved and underserved households. CVAG recommends determining a “significant” number of unserved and underserved households by measuring the number of households lacking 100 Mbps in relation to a defined geographic area and then choosing a percentage threshold of households in that region that would constitute a “significant” number of unserved and underserved households. Santa Clara County recommends that the Commission consider 10 percent of households in a census tract being unserved as the threshold for significant unserved, as that is slightly lower than the statewide average, and would direct funds to the areas most in need of assistance without unduly restricting the ability of any region to obtain funding. LAEDC opines the Commission should give equal consideration to the percentage of unserved/underserved and total number of households unserved/underserved, which is especially relevant for urban areas where multiple generations of family living in one household, and utilize both a macro and micro analysis of communities to take into account the economic demographics of different populations, including employment levels and median income, to determine the financial challenges contributing to low broadband adoption rates. CETF recommends that a single unserved household is “significant” if that resident or business desires broadband service. RCRC cautions the Commission regarding the effort to define a “significant number” of unserved and underserved households, noting that some areas are unserved because of low population density making cost of service infeasible, and that adding other qualifiers will enable entities to ignore these areas and residents.

Parties offer additional proposals for Commission consideration. Beyond the 25/3 Mbps speed threshold, SANDAG urges the Commission to consider areas impacted by affordability, age, and people with disabilities, and to be flexible, in defining the speed threshold for served status, as 25/3 Mbps rapidly is becoming obsolete. NCC asserts the eligibility criteria should also include digital equity and economic development, and that FFA funds should support local digital equity efforts and economic development to further broadband goals. The Small LECs ask that prior to awarding a FFA grant within a service area of a Small LECs, that the Commission to reach out to the specific Small LEC company regarding its capital improvement plans to make sure FFA projects will not be overbuilt on soon to be deployed network upgrades by Small LECs. AT&T urges this Commission to utilize the forthcoming FCC broadband map for FFA funding as soon as it is available.

CETF suggests the Commission delete the “Low Income Areas” definition, as it is not used anywhere in the Staff Proposal.

4.2. Discussion

The Final Rule broadens FFA funding eligibility to broadband Internet infrastructure that is “designed to provide service to households and businesses with an identified need, as determined by the recipient, for such infrastructure[.]”¹⁸ This change provides the Commission with significant discretion for developing program eligibility requirements. The Final Rule also encourages recipients “to prioritize projects that are designed to provide service to locations not currently served by a wireline connection that reliably delivers at least 100 Mbps of download speed and 20 Mbps of upload speed, as [...] those

¹⁸ 87 Fed. Reg. 4452 (January 27, 2022).

without such service constitute hard-to-reach areas in need of subsidized broadband deployment.”¹⁹

We adopt the definition of unserved area in the Staff Proposal and add other modifications and guidance that are consistent with the Final Rule. We adopt the presumption that locations lacking access to reliable wireline broadband Internet service are in need of this service.

While we do not adopt the proposal that only Internet service offered with fiber infrastructure be deemed reliable, the Commission adopts a rebuttable presumption that legacy networks cannot provide reliable Internet service at speeds of 25Mbps download and 3 Mbps upload. Specifically, areas with Internet service provided only by legacy technologies such as copper telephone lines (typically using Digital Subscriber Line technology) or older versions of cable system technology (DOCSIS 2.0 or earlier) are eligible for funding. ISPs and other interested individuals wishing to rebut this presumption must demonstrate that all locations have access to speeds of at least 25 Mbps download and 3 Mbps upload. Speed tests from terminals, cabinets and at other locations that are not end users are not sufficient. Our determination of what wireline technologies offer reliable service is consistent with the Final Rule, which found that these legacy technologies typically lag on speeds, latency, and other factors, as compared to more modern technologies like fiber.

We also adopt the proposed rule that applicants may provide data that contests the reliability of non-legacy wireline providers that claim to provide served speeds. Applications contesting the reliability of an area identified as

¹⁹ 87 Fed. Reg. 4420 (January 27, 2022).

being served will be reviewed by CD Staff and considered by the Commission's Resolution process.

In response to CETF's recommendation, we remove "low-income areas" from the definitions section of the proposed rules since we are not using that term as part of our rules.

The Final Rule departs significantly from the Interim Rule. The Final Rule focuses on "need" in determining whether an area is not served, instead of solely determining speed served status by relying on speed thresholds; it also encourages a different speed threshold, as well as introducing the concept of gap networks, among other items. In the interest of adopting FFA rules expeditiously, and thereby accepting grant applications sooner, the Commission adopts these rules on an interim basis. We anticipate developing the record further, so as to address the new concepts and higher speed thresholds adopted in the Final Rule.

5. Project Identification and Prioritization

The ACR proposes a process where the Commission identifies priority proposed project areas and initiates a round of grant-making through public announcements. Under the proposal, CD Staff will publish proposed project areas that are coordinated with the Commission's obligation to assist in preparing definitive plans for deploying necessary infrastructure in each county, including coordination across contiguous counties.

The proposed project areas will be developed on a county-by-county basis while accounting for projects that may not fall strictly within county lines. Proposed projects will endeavor to ensure that all unserved communities are served. Potential applicants will have an opportunity to propose adding or

subtracting from the proposed project area consistent with the eligible area requirements.

The ACR also requests comment on what information CD Staff should take into consideration in developing these priority areas; whether the proposed Application Objection process balances the need to ensure a fair process for an Internet service provider asserting it already serves a proposed priority project area, with the need to award grants in an expeditious manner; and whether parties propose additional or different criteria.

5.1. Party Positions

Parties disagree both over whether the Commission should adopt the proposed prioritization process, or even if it should adopt priorities.

AT&T in general supports the proposed process for identifying priority project areas, though both it and CETF recommend the Commission identify projects on a countywide basis and prioritize the counties with the most unserved and underserved locations by issuing Requests for Partnerships or Requests for Proposals for specific unserved locations. AT&T and CCBC support the Commission publicly releasing the data used to determine priority areas. TURN contends the Commission should not solely rely on the proposed Ministerial Review to develop priority projects and instead use information received in this proceeding and related proceedings to narrow locations to priority areas.

CCTA and Comcast oppose the proposed prioritization process, arguing it would create an eligibility standard that differs from the 25 Mbps download and 3 Mbps upload unserved standard adopted for the separate Broadband

Infrastructure Grant Account.²⁰ Comcast argues that if CD Staff will be determining priority areas, the Commission should clarify that unserved and underserved will be prioritized. Frontier also does not support the Commission identifying priority areas, arguing that there is not enough time to undertake the task. Instead, Frontier asserts the Commission should evaluate every proposal addressing if the areas are unserved or underserved for consistency with federal requirements.

AARP, CforAT, SBUA, SCAG, UNITE-LA, Cal Advocates, Los Angeles County, Santa Clara County, and Coachella Valley Association of Governments all offer different metrics and terminologies that lead to prioritization of historically unserved or underserved communities,²¹ with the focus on characteristics or demographics like lower-income census tracts, racial indicators, rural and Tribal lands, areas prone to natural disasters, communities with high concentration of at-risk youth/students or seniors, where residents have higher risks of poor health. Cal Advocates recommends prioritizing “marginalized communities,” a specific term that includes tribal areas, Environmental and Social Justice (ESJ) communities based on Cal EnviroScreen scores, areas classified as “C - Definitely Declining or “D - Hazardous” according to Homeowner’s Loan Corporation maps, and low-income areas, as defined in the

²⁰ For clarity, Pub. Util. Code § 281 (b)(1)(B)(ii) reads, in part “For purposes of the Broadband Infrastructure Grant Account, both of the following definitions apply:... ‘unserved area’ means an area for which there is no facility-based broadband provider offering at least one tier of broadband service at speeds of at least 25 Mbps downstream, 3 Mbps upstream, and a latency that is sufficiently low to allow real-time interactive applications, considering updated federal and state broadband mapping data.”

²¹ For clarification, we use the term “historically unserved or underserved” in this context to distinguish from the definitions of unserved and underserved that define FFA grant eligibility (or CASF Infrastructure grant eligibility).

FFA Staff Proposal. Cal Advocates also recommends prioritizing projects in areas without access to Internet service at speeds of 10/1 Mbps. AT&T does not support these proposals, asserting that a formula that requires analyses of income, demographics, or environmental characteristics will add complexity and uncertainty to the grant-making process.

Frederick L. Pilot recommends prioritizing areas lacking 25/3 Mbps and those that rely primarily on wireless service. LCB Communications and South Valley Internet encourage prioritizing counties with unserved areas before underserved areas. NDC and AT&T contend the prioritization should focus first on connecting residential households, then anchor institutions over retail or commercial businesses. SBUA suggests the Commission consider the needs of small businesses, diverse businesses, tribal areas, and underserved populations in counties with high unserved households. CVAG recommends prioritizing areas based on access to middle mile projects that can facilitate last mile and by reduce costs, unserved/underserved areas that have secured funds for last mile connections, areas with shovel ready projects can help meet strict federal spending guidelines. SBUA supports including counties where 33 percent or more have insufficient access to middle mile.

San Francisco, LAEDC, and SANDAG ask the Commission to work closely with communities to identify priority areas, including working with local governments, as well as other groups like and CASF Consortia. SCAG recommends the Commission work with Caltrans, CTCs, MPOs, local agencies and ISPs for additional data and input, due to lack of granular data. AARP suggests including adoption data into the determination of whether an area is served. LAEDC recommends using the most recent and granular broadband

availability data for counties, as well as user speed tests, and interviews with residents and businesses.

5.2. Discussion

The Commission adopts the Staff Proposal with clarifications of how priority areas are defined and identified.

“Priority Area” means an area with a high density of unserved locations, analyzed on a county basis, that makes a substantial contribution to meeting the state’s broadband deployment objectives, as identified by CD Staff. A grant applicant may add or subtract to priority areas, which will be verified by the CD Staff. The priority areas will be coordinated with the Commission’s obligation to assist in preparing definitive plans for deploying necessary infrastructure in each county, including coordination across contiguous counties.

CD Staff will publish the priority areas, which are a subset of the eligible unserved areas, on the Commission website. This publication will include details such as median household income, disadvantaged community status, and other measures of broadband need and digital equity. Consideration of disadvantaged communities in scoring as discussed later on in this decision. CD Staff will provide notice that the priority areas have been published, at a minimum, on the service list for this proceeding, the service list for the CASF proceeding,²² and the CASF Distribution List that CD Staff maintains. CD Staff may update the priority areas as other broadband data becomes available.

6. IOU Fiber Pilots

A key portion of this proceeding prior to the enactment of SB 156 involved examining whether there is a role for the electric Investor-Owned Utilities (IOUs)

²² R. 20-08-021.

in deploying broadband Internet access service. This included the IOUs organizing a workshop and presenting project ideas. The ACR request comments on the following questions:

- How can the FFA be utilized to achieve this objective?
- Should the IOU Fiber Pilots in Phase II be moved into Phase III?
- How should the Commission consider changes to add flexibility to the rules to facilitate applicants from multiple entities such as partnerships between multiple last mile providers or a middle mile applicant such as an IOU and a last mile provider?
- How should the Commission consider or identify IOU rights-of-way that would enable last mile connections and work to fund or effectuate deployment in those IOU rights of way even without an IOU and last mile provider partnership?

6.1. Party Positions

Parties offer a number of competing positions on the IOU Fiber Pilots.

Frederick L Pilot recommends that if IOUs wish to be wholesale network operators, then the Commission should adopt rules to facilitate that, while also encouraging the IOUs to partner with public entities. SBUA supports using FFA funding to leverage the electric IOUs' in-depth expertise in developing "reliable and cost-effective network grids which connect last-mile circuits to the backbone network" their "extensive rights-of-way and experience working within regulatory requirements and local permitting and related requirements, and their expertise in marketing, provisioning, delivering, billing, and offering customer support to their ratepayers."

CforAT, SDG&E, and RCRC support moving the IOU Fiber Pilots to a separate phase of this proceeding, to allow more time to create viable projects.

AT&T notes that the voluntary sharing of assets could be facilitated by revising the Commission's processes related to Pub. Util. Code § 851.

CWA asserts that telecommunications service providers are best equipped and experienced to build and maintain broadband networks, not IOUs, as the IOUs must focus on preventing wildfires and have little interest in deploying broadband.

SANDAG proposes that the Commission become a clearinghouse to help collect and share data that could inform broadband investments and facilitate partnerships between last mile, middle mile, and IOU partners. CETF notes that, at a workshop during Phase I of this proceeding, the IOUs presented some information about areas where they have available dark fiber and recommends that this information be made accessible to potential middle-mile providers and CENIC. CETF also suggests that Staff should contact a designated IOU contact that serves a specific community to discuss whether the IOU may have facilities to help bring middle mile facilities to the community.

SCE asserts that ISPs should only be permitted access to IOU rights-of-way after the Commission makes a determination on eligibility under the Commission's ROW rules, as ISPs are not currently eligible, arguing that it would be unfair to allow them nondiscriminatory access without first vetting them. If the Commission determines ISPs should have nondiscriminatory access, they should request access via Pole License Agreements, similar to how CLECs, CMRS, and similar telecommunications services providers currently operate. SDG&E supports using FFA funds to enable ISPs to partner with utilities to address service gaps, though SDG&E asserts that telecommunications providers wanting to use SDG&E facilities for last-mile broadband Internet service, via joint trenching or pole attachment, would be required to obtain their own land

rights and the Commission cannot authorize a utility to do more than what their land rights allow under the law and cannot grant land rights to third parties to IOU electric infrastructure. Verizon recommends the Commission require the IOUs to provide access to their streetlight poles at regulated approved rates, which will ensure that last mile projects are built without substantial delays at a reasonable cost.

6.2. Discussion

At this time, we decline to adopt specific requirements regarding the IOU Fiber Pilots. As discussed in the Eligible Entities section, we adopt rules making the IOUs eligible for FFA grants.²³ It is possible that some of the proposals the IOUs have worked on as part of this proceeding may be eligible for FFA funds. We encourage the IOUs to enter into partnerships to deploy broadband infrastructure and assist applicants with the deployment of broadband networks using utility support structures. We may still examine other ways to leverage IOU fiber as part of another decision or phase of this proceeding.

7. Apportionment of Funds

On November 10, 2021, the assigned ALJ issued a ruling requiring comments on the apportionment of funds for the FFA. Pub. Util. Code §§281(n)(3)(A) and 281(n)(3)(B) respectively direct this Commission to spend \$2 billion on broadband Internet infrastructure projects, with \$1 billion allocated to projects in urban counties and \$1 billion allocated to projects in rural counties. The Commission initially must allocate \$5 million for projects in each county and then allocate the remaining funds in the respective urban or rural allocation, based on each county's proportionate share of households without access to

²³ Although IOUs are eligible for FFA grants, this decision does not change other rules outside the scope of this proceeding that may impact an IOU's ability to participate.

broadband Internet access service speeds of at least 100 megabits per second download.

Because the Legislature largely left this determination to the Commission, and various federal and state agencies use different definitions and/or methodologies to determine whether a county or another geographic area is “rural” or “urban,” the November 10, 2021 assigned ALJ ruling includes three different options for parties to comment on, as well as a request to propose alternatives. The ruling proposed to define rural and urban in a manner similar to how the federal Office of Management and Budget (OMB), with “urban” counties being the same as “metropolitan” counties and “rural” counties the same as “nonmetropolitan” counties. Two additional options include relying on the U.S. Census Bureau’s determinations and one where individual counties self-identify as rural, as is the case with the membership of the Rural County Representatives of California (RCRC), an association representing California’s small, rural counties that includes 37 member counties.

7.1. Party Positions

Parties disagree on whether the Commission should adopt the three methods contained in the assigned ALJ ruling. Several parties offered alternative proposals. Additionally, some parties modified their positions during reply comments.

In their opening comments the following four parties express support for using the OMB method: County of Mendocino, NDC, North Bay/North Coast Broadband Consortia (NBNCBC), and UCAN. CCTA and the Small LECs support using U.S. Census Bureau designations. Nine parties support designating rural counties as those that have self-identified through their membership in RCRC: County of Los Angeles, Santa Clara, Frederick L. Pilot,

LAEDC, #OaklandUndivided Coalition, SANDAG, SBUA, SCAG, and UNITE-LA. Five parties propose alternatives: CETF, Santa Clara, Frederick L. Pilot, RCRC, and TURN.

CETF discusses the defects of relying on each of the alternatives in the ruling. CETF asserts that while government programs typically choose to utilize the OMB or U.S. Census Bureau definitions, those definitions do not address the actual issues that result in lack of broadband, such as geographic challenges (terrain, geography), lack of middle-mile or Internet Point of Presence facilities, lack of electricity, extreme poverty, a large percentage of low-income households on the outlying county. Relying on RCRC membership reduces the amount of money available to the most rural and remote counties, with sparse populations and little middle-mile facilities, or with persistent poverty and economic challenges. CETF recommends that counties with the highest number of unserved and underserved households at speeds of 100 Mbps download, with significant socioeconomic factors indicating high poverty and unemployment, or a stagnant economy, with a high average cost of construction to reach unserved households, should be deemed “rural” and thus be apportioned additional funding.

RCRC identifies flaws with each method contained in the ruling, including arguments that the U.S. Census methodology is based on outdated population data to determine areas that meet “rural” and “urban” definitions, that relying on RCRC membership results in vastly disparate funding allocations across the rural counties, disadvantaging the 21 most rural and least populated jurisdictions, and that the OMB method creates a similarly inequitable outcome for those 16 more populated rural counties that would need to compete with exponentially larger and more resourced urban counties. RCRC proposes a

hybrid method that uses the definition of “rural” as set forth in the OMB model, which allocates \$1 billion to those 21 described “rural” counties, and then divides the 37 remaining counties in the “urban” category into 16 “small urban counties” and 21 “large urban counties.” The “small urban” and “large urban” categories would receive pro-rata allocations of the \$1 billion in funding based on the number of counties in the group. The “small urban” group would receive 16/37th of the total, \$432,432,432, and the “large urban” group would receive 21/37th of the total, \$567,567,567.

TURN recommends against using any of the three methods contained in the ruling, arguing that all three rely on a single metric and, as such, are flawed. Instead, TURN recommends using those methods in conjunction with other methodologies to foster equity in dividing FFA funds. TURN reviewed seven different methodologies to create its proposed method of classification, concluding:

Six of these methodologies had complete consensus regarding 41 of the 58 California county designations. TURN recommends the Commission adopted the consensus designation for these counties as urban or rural, which leaves 17 counties that did not have complete consensus. However, of these 17 remaining counties, eleven counties would have had complete consensus across the six methodologies but for the Rural Counties Representatives of California Membership Methodology. TURN recommends the Commission adopt the near complete consensus designations for these eleven counties, leaving only six counties left to be designated. For each of these six counties, their unserved residents primarily reside in rural areas of each county. Therefore, TURN

recommends these last six counties be considered rural for the purposes of the Federal Funding Account.²⁴

NBNCBC urges the Commission to use a methodology that prioritizes serving unserved and underserved areas with the least access, that reflects the use of a tiered system based on current broadband availability in each county and the number of households required to reach 98 percent served. A tiered system could be used. In addition, NBNCBC suggests the Commission base the analysis or methodology on data that is more accurate, by measuring broadband availability at a granular level, such as by household or similar metrics. NBNCBC further suggests the Commission should consider the alignment of the state's open access middle-mile network deployment plans with the Federal Funding apportionment to ensure both initiatives are successful and supplement each other.

In their reply comments, San Francisco and Cal Advocates also express support for using the method where counties have self-identified.

SBUA supports CETF's proposed alternative. CCBC and RCRC support the RCRC hybrid alternative. NDC, TURN, and UCAN support TURN's proposal.

AT&T urges the Commission to refrain from imposing caps on the size of grants on a county basis.

7.2. Discussion

Instead of adopting any of the options for determining which counties are rural and which are urban put forward in the assigned ALJ ruling, we adopt

²⁴ The seven methodologies come from the United States Census Bureau, the White House Office of Management and Budget, the United States Department of Agriculture, the United States Department of Health and Human Services, the Pew Research Center, the California State Association of Counties, and the Rural County Representatives of California.

TURN's proposal, as it is the most rigorous, and attempts to arrive at a consensus by relying on seven different approaches, instead of one. The TURN proposal appropriately balances the two most significant competing realities of broadband Internet infrastructure: rural areas typically have higher constructions costs -- due to more rugged terrain, poles with greater failure rates, and lower population density -- while urban areas have the highest number of unserved households.²⁵

Table 1. Rural County Allocations

Rural Counties (27)			
Population Unserved		County	Allocation = \$5 million + \$5,419.76554 per unserved resident²⁶
1	367	Alpine	\$6,989,053.95
2	9,632	Amador	\$57,203,181.68
3	4,761	Calaveras	\$30,803,503.74
4	4,419	Colusa	\$28,949,943.92
5	976	Del Norte	\$10,289,691.17
6	19,716	El Dorado	\$111,856,097.39
7	3,704	Glenn	\$25,074,811.56
8	10,063	Humboldt	\$59,539,100.63
9	1,517	Inyo	\$13,221,784.32
10	6,031	Kings	\$37,686,605.97
11	4,324	Lake	\$28,435,066.19
12	3,673	Lassen	\$24,906,798.83
13	11,362	Madera	\$66,579,376.07
14	6,613	Mariposa	\$40,840,909.52
15	9,674	Mendocino	\$57,430,811.83
16	3,493	Modoc	\$23,931,241.03
17	1,033	Mono	\$10,598,617.80

²⁵ According to data as of December 31, 2019, Los Angeles County and Orange County have 60,752 and 53,039 unserved households without access to speeds of 100 Mbps respectively.

²⁶ Allocation per unserved resident = $(\$1B - [(\$5M/\text{county}) \times (27 \text{ counties})]) / (159,601 \text{ unserved residents})$.

18	12,891	Nevada	\$74,866,197.58
19	6,879	Plumas	\$42,282,567.15
20	1,003	San Benito	\$10,436,024.84
21	1,385	Sierra	\$12,506,375.27
22	7,526	Siskiyou	\$45,789,155.45
23	2,841	Sutter	\$20,397,553.90
24	12,879	Tehama	\$74,801,160.39
25	4,551	Trinity	\$29,665,352.97
26	1,946	Tuolumne	\$15,546,863.74
27	6,342	Yuba	\$39,372,153.05
TOTAL	159,601		\$999,999,999.95

Table 2. Urban County Allocations

Urban Counties (31)			
	Population Unserved	County	Allocation = \$5 million + \$1,640.37218 per unserved resident²⁷
1	11,898	Alameda	\$24,517,148.20
2	8,657	Butte	\$19,200,701.96
3	6,772	Contra Costa	\$16,108,600.40
4	34,236	Fresno	\$61,159,781.95
5	5,458	Imperial	\$13,953,151.36
6	16,038	Kern	\$31,308,289.02
7	60,752	Los Angeles	\$104,655,890.68
8	3,987	Marin	\$11,540,163.88
9	13,571	Merced	\$27,261,490.85
10	7,484	Monterey	\$17,276,545.40
11	3,478	Napa	\$10,705,214.44
12	53,039	Orange	\$92,003,700.06
13	15,397	Placer	\$30,256,810.46
14	27,820	Riverside	\$50,635,154.05
15	20,552	Sacramento	\$38,712,929.04
16	33,335	San Bernardino	\$59,681,806.62
17	46,512	San Diego	\$81,296,990.84

²⁷ Allocation per unserved resident = $(\$1B - [(\$5M/\text{county}) \times (31 \text{ counties})]) / (515,127 \text{ unserved residents})$.

18	3,288	San Francisco	\$10,393,543.73
19	14,896	San Joaquin	\$29,434,983.99
20	10,575	San Luis Obispo	\$22,346,935.80
21	3,307	San Mateo	\$10,424,710.80
22	6,627	Santa Barbara	\$15,870,746.44
23	18,907	Santa Clara	\$36,014,516.81
24	3,245	Santa Cruz	\$10,323,007.72
25	16,729	Shasta	\$32,441,786.20
26	7,320	Solano	\$17,007,524.36
27	8,677	Sonoma	\$19,233,509.41
28	12,407	Stanislaus	\$25,352,097.64
29	24,463	Tulare	\$45,128,424.64
30	9,365	Ventura	\$20,362,085.47
31	6,335	Yolo	\$15,391,757.76
TOTAL	515,127		\$999,999,999.97

8. Application Evaluation Criteria

Consistent with federal rules, the ACR proposed that approved projects must deliver, upon project completion, service that reliably meets or exceeds symmetrical upload and download speeds of 100 Mbps.²⁸

The ACR also proposes the following evaluation criteria for project applications:

- 10 points for applications with matching funds;
- 10 points for applications proposing fiber optic infrastructure;

²⁸ There may be instances in which it would not be practicable for a project to deliver such service speeds because of the geography, topography, or excessive costs associated with such a project. In these instances, the affected project would be expected to deliver, upon project completion, service that reliably meets or exceeds 100 Mbps download and between at least 20 Mbps and 100 Mbps upload speeds and be scalable to a minimum of 100 Mbps symmetrical for download and upload speeds.

- 10 points for an application proposing to build a broadband network owned, operated by, or affiliated with local governments, non-profits, Tribe, and cooperatives;
- 10 points for applications that integrate two or more affordability options (*e.g.*, affordable offer, low-income plan, California LifeLine, federal Lifeline, and/or the Emergency Broadband Benefit or its successor);²⁹
- 40 points for an application proposing to serve an area identified by the Commission's Communications Division;³⁰
- 10 points for applications that demonstrates the financial, technical, and operational capacity to execute the project successfully and complete on time; and
- 10 points for applications that demonstrate a well-planned project with a reasonable budget that shows it will deliver speeds and service proposed and be sufficiently robust to meet increasing demand for bandwidth will receive credit.

The Commission reserves the right to reject any application and determine the terms of a grant award, including the award amount, with the selected applicant prior to offering the grant. If negotiations cannot be concluded successfully with an applicant, as determined solely by the Commission, the Commission may withdraw its award offer.

8.1. Party Positions

Parties propose a number of changes to the evaluation criteria.

CENIC notes the proposed evaluation criteria do not indicate how point values will be awarded to applicants and appear to award points on an all or nothing basis.

²⁹ Interim Rule, 86 Fed. Reg. 26786, 26806.

³⁰ Pub. Util. Code § 281 (b)(5)(C). *See also*, Coronavirus State and Local Fiscal Recovery Funds, Federal Register Volume 86, No. 93, Page 26804 (May 17, 2021).

GeoLink, Joint WISPs, and Verizon support eliminating the 10-point preference for fiber. Verizon supports reducing or eliminating the 10-point preference provided to partnerships with local government, Tribes, nonprofit entities, and cooperatives, asserting that the Commission should grant preference or credits based on a track record of successful broadband deployment, on entities proven ability to construct and manage broadband infrastructure. While TURN supports providing funding criteria for these partnerships, TURN urges the Commission be cautious about expending significant time or resources to try to incentivize private providers to participate in this realm and should closely review the proposed partnership to ensure that the public agency is a true partner in the project. LAEDC and TURN oppose requiring applicants find matching or additional funds for FFA projects, as these may preclude smaller, but nonetheless vital projects.

Cal Advocates and RCRC support awarding additional points to proposed projects in areas without access to broadband Internet service at speeds of 10/1 Mbps, and to applications proposing to serve marginalized communities. RCRC further suggests prioritizing areas lacking sufficient mobile wireless coverage as these areas typically prone to natural disasters. GeoLinks proposes making additional points available for applicants that leverage federal funding from other grant programs.

Greenlining Institute recommends increasing the number of points offered for affordability from up to ten points to up to 15. SANDAG suggests the Commission add additional credit or weight for the affordability requirement to ensure affordable options are thoughtfully integrated. Until such time as the Commission revises LifeLine to include broadband Internet service plans, Cal Advocates proposes that the Commission award FFA applicants for participation

in LifeLine and up to ten points for offering two or more affordable options including Lifeline and EBB. San Francisco proposes the Commission award additional points to projects owned or operated by local government or non-profits, as these entities have a longer-term perspective than private companies, with more points for local governments over non-profits. CWA asserts the Commission should not give municipal broadband Internet networks preferential treatment. Rather, CWA argues that, with greater oversight and accountability, private companies are best for network deployment, having economies of scale and skilled workforces, while municipal and nonprofit broadband Internet network builds are not scalable, and often work best in small localities that own and operate an electric utility. CWA concedes, however, that public-private partnerships are a fast and efficient manner to deploy fiber to the home.

CCTA asserts that, as drafted, the Staff Proposal does not indicate how the proposed point system would be used and that some of the proposed criteria are basic application requirements. CCTA proposes an evaluation process that is only used when either: 1) there are competing applications for the same proposed project area, or 2) the total amount of funds requested in applications exceeds available funds. CCTA contends its proposed process would prioritize proposed projects that will connect the greater number of unserved households in a consortia region that has not met the 98 percent goal; proposed projects that will connect the greater number of unserved households that have no service or very slow service; proposed projects that are located in an urban county or rural county with a greater proportion, compared to other urban or rural counties respectively, of households without access to broadband internet access service

with at least 100 Mbps download speed; and proposed projects that will provide the greater percentage of matching funds.

CCBC recommends the Commission focus more explicitly on reviewing applications in six months.

Frederick L Pilot and SANDAG propose that the Commission prioritize last mile projects that leverage the state-owned middle mile infrastructure or give those applications additional credit.

8.2. Discussion

We adopt the evaluation criteria in the Staff Proposal with modifications. To begin, we revise the point totals to reflect that applicants may receive up to the amount specified.

We decline to eliminate the proposal to award up to 10 points for applicants that propose to offer Internet service using fiber. The Final Rule explicitly encourages fiber projects. Awarding 10 points to fiber projects aligns with that goal.

We modify the 10 points provided for offering affordable plans or participating in low-income subsidy programs to reflect updated guidance from the Treasury in the Final Rule. In an effort to incent local governments to participate in this program, we also increase the amount of points available for broadband networks operated by municipalities, Tribes, non-profits and cooperatives and reduce the amount for priority projects identified by the Commission's Communications Division by 10 points. We also add two incentives for applicants to offer longer-term pricing commitments and affordable plans. The evaluation criteria for project applications, as modified, are:

- Up to 10 points for applications with matching funds;

- Up to 10 points for applications proposing fiber optic infrastructure;
- Up to 20 points for an application proposing to build a broadband network owned, operated by, or affiliated with local governments, non- profits, Tribe, and cooperatives;
- Up to 10 points for applications that integrate the California LifeLine or federal Lifeline program;³¹
- Up to 10 points for applications that include pricing commitments for 10 years, including Consumer Price Index adjustments;
- Up to 20 points for applications to include one plan offering speeds of at least 50 Mbps download AND 20 Mbps upload for no more than \$40 per month, including Consumer Price Index adjustments;
- Up to 20 points for an application proposing to serve an area identified by the Commission's Communications Division;³²
- Up to 10 points for applications that demonstrate the financial, technical, and operational capacity to execute the project successfully and complete it on time;
- Up to 10 points for applications that demonstrate a well-planned project with a reasonable budget that shows it will deliver speeds and service proposed and be sufficiently robust to meet increasing demand for bandwidth; and
- Up to 10 points for applications that propose to leverage the statewide open-access middle mile network, unless not in reasonable proximity to the network.

³¹ Interim Rule, 86 Fed. Reg. 26786, 26806.

³² Public Utilities Code § 281 (b)(5)(C). See also, Coronavirus State and Local Fiscal Recovery Funds, Federal Register Volume 86, No. 93, Page 26804 (May 17, 2021).

9. Leveraging Other Funds

The ACR requests comments on how the FFA can best coordinate and leverage other broadband infrastructure funds.

9.1. Party Positions

Parties do not agree on how, or necessarily even if, FFA rules should leverage other broadband infrastructure funds.

CforAT, SANDAG and CVAG support leveraging state and federal funds to connect the largest number of households possible. CVAG recommends the Commission prioritize projects that have secured funds for last mile connections. AT&T supports allowing matching funds for FFA grants provided an ISP is not able to “double dip” and receive funding from two programs to deploy the same service in the same area. SBUA supports leveraging grant programs that target digital equity and economic benefits for low-income, unserved, underserved, disadvantaged customers, including small and diversified businesses, such as the federal Small Business Administration and California’s and Governor’s Office of Business and Economic Development programs, though FFA applicants should use these programs before FFA when applicable. SCAG encourages coordination with the California Department of Housing (HCD) and the United States Department of Housing and Urban Development (HUD).

LAEDC recommends coordination between local and state agencies, as well as CASF regional consortia. SCAG recommends partnerships with other agencies, private sector, and non-profits that can assist in the application process, including metropolitan planning organizations like SCAG. NCC and TURN support the Commission facilitating information sharing on FFA and other programs.

SDG&E encourages the leveraging of existing infrastructure, including through joint trenching agreements.

The Small LECs assert that projects awarded under FFA should not compete with projects granted from other Commission-related programs, or other new grant programs contemplated by SB 156, and that projects under the FFA program should be prioritized because the funding is available for a short period of time.

CCTA, Comcast, and Frontier recommend that FFA rules should align, to the extent possible, with the existing CASF Infrastructure Grant rules, to encourage program participation and increase efficiency, though Frontier asks the Commission to not prioritize applications based on percentage of matched funding the applicant proposes. Instead of leveraging federal and state funds, Comcast also appears to suggest the Commission devise program rules for line extension to unserved areas that are consistent with the FFA program and the CASF program.

9.2. Discussion

The Final Rule provides additional guidance for the Commission on how to address instances in which existing funds from other broadband infrastructure programs have been allocated to improve service in a proposed project area:

to the extent recipients are considering deploying broadband to locations where there are existing enforceable federal or state funding commitments for reliable service at speeds of at least 100 Mbps download speed and 20 Mbps upload speed, recipients must ensure that SLFRF funds are designed to address an identified need for additional broadband investment that is not met by existing federal or state funding commitments. Recipients must also ensure that SLFRF funds

will not be used for costs that will be reimbursed by the other federal or state funding streams.³³

Consistent with the Final Rule, grant applications that propose to combine FFA funds with funds from a separate broadband infrastructure grant program will be permitted. Applicants must detail how these funds address an identified need for additional broadband investment that is not met by existing federal or state funding commitments. Applicants must itemize project costs, detail how funds will not be used for costs that will be reimbursed by the other federal or state funding streams and explain the public benefit that additional funds will provide. This will help prevent duplication of funding and help meet the requirement in the Final Rule that SLFRF funds are being used to address a need in the area and will not cover the same costs reimbursed by other grants. Applications seeking to leverage additional funds are not eligible for ministerial review and must be approved by the Commission by resolution.

Locations with existing enforceable federal or state funding commitments to deploy reliable wireline service at speeds of at least 100 Mbps download speed and 20 Mbps upload speed will not be included in the locations Communications Division identifies as being eligible for funding. These commitments must be public and demonstrable. If a grant application proposes to serve locations with an enforceable commitment, the grant must be approved by Commission Resolution.

10. Eligible Entities

The ACR proposes the following entities as eligible recipients of a FFA grant:

³³ 87 Fed. Reg. 4422 (January 27, 2022).

- Entities with a Certificate of Public Convenience and Necessity (CPCN) that qualify as a “telephone corporation” as defined under Public Utilities (Pub. Util.) Code section 234; or
- Non-telephone corporations that are facilities-based broadband service providers; or
- Local governmental agencies; or
- Electric utilities; or
- Tribes.³⁴

The ACR also asks for recommendations regarding what information the Commission should consider in the rules to allow flexibility to enable partnerships between entities and providers, including public entities and one or more broadband Internet service providers.

10.1. Party Positions

AT&T supports enabling partnerships between entities and providers as an effective mechanism to achieve the program goals. NCC recommends defining eligible entities in broad terms to include a range of innovative approaches that communities may use to improve connectivity. CCTA urges the Commission to adopt the same approach as the existing CASF Infrastructure Grant Account, which allow any entity, including a public agency, to apply for a grant upon a showing of being technically, economically, and operationally qualified and otherwise complying with program requirements, and permits partnerships as long as one member of the partnership is the designated lead

³⁴ On April 6, 2018, a Tribal Consultation Policy was formally adopted by the California Public Utilities Commission (Commission). The Commission’s Tribal Consultation Policy defines “California Native American tribe” as a Native American Tribe located in California that is on the contact list maintained by the Native American Heritage Commission for the purposes of Chapter 905 of the Statutes of 2004. (See Public Resources Code Section 21073.) California Native American Tribes include both federally recognized and non-federally recognized Tribes.

party that meets application requirements and signs the consent form agreeing to be accountable for compliance with all terms of the grant.

RCRC supports creating alternative rules for municipalities and tribal governments creating open access last mile networks. SBUA also supports encouraging public-private partnerships, though the organization cautions that public-private partnerships can lead to challenges when the private entity is granted public right of way (ROW). To avoid this, the CPUC should not grant public ROW to other last mile providers which are not also provided to utilities with the same ROW and special conditions. SANDAG urges the Commission to expand eligibility to metropolitan planning organizations (like SANDAG and SCAG), regional transportation planning agencies, broadband consortia, as well as educational institutions, community-based organizations or cooperatives that may want funding to partner with an ISP. CETF and UNITE-LA propose expanding eligibility to anchor institutions, such as school districts, library systems and rural telehealth providers or their consortiums, as well as nonprofit organizations dedicated to providing broadband Internet access service to an unserved or underserved community.

SDG&E supports the proposal to include utilities as eligible entities for FFA grants, especially so the companies may partner with other stakeholders to leverage existing and future utility infrastructure. SDG&E also recommends the Commission expand eligibility to allow for multiple grant recipients to partner with last-mile providers. Frederick L. Pilot proposes the Commission adopt rules that facilitate IOUs wishing to be wholesale network operators offering dark fiber services to retail service providers.

Several parties, including Geolinks, Joint WISPs, CETF, Santa Clara County, CETF, and Verizon urge the Commission to consider wireless service

providers that use new spectrum to deliver Internet access through Citizens Broadband Radio Service (CBRS) and satellite, asserting that the Interim Final Rule does not limit FFA projects to fiber. Joint WISPs also recommend that the proposed rules be updated prior to the Commission adopting them in the event the interim SLFRF rule is updated, or that the rules only apply to funds made available through SB 156 and ARPA, as future funding from the State or Federal government may have different requirements.

Frederick L Pilot supports the Commission adopting rules that encourage public entities as wholesale network operators, given the traditional role of public entities as owners and operators of critical infrastructure and the 30–50-year life of fiber infrastructure that supports ownership stable public entities can provide. NCC suggests the Commission could defer to municipalities and provide local leaders with policy mechanisms and educational tools needed to hold providers accountable for commitments made during the funding application process, including model contracts, peer-to-peer collaboration, and enforcement from the Commission could provide important balance that also maintains ample room for innovation. RCRC opposes requiring entities that do not hold CPCNs provide a letter of credit, asserting that it will add costs and discourage public entities from building networks, and that municipalities can demonstrate fiscal responsibility by other means, as it is rare for them to go bankrupt but private entities do so regularly.

10.2. Discussion

We revise the list of eligible entities to include non-profits and cooperatives in response to parties' comments. This enables flexibility in the type of partnerships and is consistent with the "Type of Partnership" criterion under Evaluation of Applications section of the Staff Proposal.

The Commission encourages partnerships between various organizations to build out capacity for broadband infrastructure deployment, though the Commission also must balance that with the need to ensure accountability for program funds. Designating the member of a partnership that will be deploying the broadband infrastructure as the lead party for the grant facilitates accountability and compliance with all grant requirements.

If public entities or Tribal governments seek exemptions from specific program rules to accommodate the creation of open access last mile networks, these entities must detail the exemptions they seek in their applications. Given that these applications seek to deviate from Commission rules, they will not be eligible for ministerial review.

With these revisions, the Commission adopts this rule.

11. Funding of Middle Mile Infrastructure

Consistent with federal rules, the ACR proposes to allow “middle-mile projects,” though recipients are encouraged to focus on projects that will achieve last-mile connections – whether by focusing on last-mile projects or by ensuring that funded middle-mile projects have potential or partnered last-mile networks that could or would leverage the middle-mile network.

For projects that include funding for middle-mile infrastructure, Staff will evaluate and verify that the proposed middle-mile infrastructure is needed to achieve the last-mile connections. Staff will verify if existing middle-mile infrastructure in a proposed project area is sufficient, reasonably affordable, and open-access prior to granting or making a recommendation to the Commission to grant a proposed project. Additionally, the Commission will evaluate whether the proposed middle mile infrastructure can be provided by or incorporated into the statewide middle mile network.

The ACR asks parties to recommend ways the Commission can ensure that FFA grants coordinate and take advantage of the statewide middle mile network authorized in SB 156.

11.1. Party Positions

CCTA recommends the Commission require that FFA projects requesting funds for middle mile infrastructure demonstrate that the infrastructure is “indispensable” to be consistent with the CASF Infrastructure Grant Account rules. As part of its review, CD Staff would examine if existing middle-mile facilities are available. If there are none, CD Staff could also consider whether the new state middle-mile network could be utilized to connect the last-mile households in that proposed project.

TURN asserts that the existence of a FFA last-mile applicant that indicates middle-mile facilities are indispensable serves two purposes: (1) it would highlight where middle-mile either does not exist or is not accessible with sufficient capacity; and (2) it would demonstrate that state-wide middle-mile is necessary for last-mile providers to interconnect. If the state-owned middle-mile can provide service to the proposed FFA last-mile project, the FFA funds would not need to expend funds on middle-mile service to serve that project and therefore save FFA funds for additional last-mile projects. Thus, TURN proposes that Staff use information obtained from CASF Infrastructure Grant Account projects and FFA projects that requests funding for indispensable middle mile as an indication that affordable middle mile, with sufficient capacity, does not exist.

SANDAG suggests the Commission allow last mile deployments to also fund complementary middle mile infrastructure to fill in gaps overlooked by statewide middle mile.

Frederick L Pilot and SANDAG propose that the Commission prioritize last mile projects that leverage the state-owned middle mile infrastructure or give those applications additional credit. AT&T, Comcast, Verizon, and San Francisco urge the Commission to not require FFA grantees to use the State's middle-mile network, so grantees may consider other options that may be more economical or operationally feasible and expedite the completion of the project more expeditiously.

CETF, South Valley Internet, and CVAG recommend that the Commission closely coordinate middle-mile connectivity with the California Department of Technology (CDT) and CENIC. Joint WISPs and SANDAG suggest the Commission create a central clearinghouse or database to track permit applications and store public construction locations and scheduling plans, as well as other data on middle- and last-mile investments. Joint WISPs urge the Commission to direct middle-mile and last-mile developers to cooperate in using conduit and trenching to minimize total expenditures and community disruption.

11.2. Discussion

The Commission will award FFA funding to last-mile applications that also propose to include middle-mile infrastructure that is necessary, and not near the statewide middle-mile network. For projects that include funding for middle-mile infrastructure, CD Staff will evaluate and verify that the proposed middle-mile infrastructure is needed to achieve the last-mile connections. CD Staff will verify if existing middle-mile infrastructure in a proposed project area has sufficient capacity, is reasonably affordable, and is open-access prior to granting or making a recommendation to the Commission to grant a proposed

project. CD Staff will post guidance regarding specifications for middle-mile infrastructure funded through FFA on its website.

Additionally, the Commission will evaluate whether the proposed middle-mile infrastructure can be provided by the statewide middle-mile network. Proposed middle-mile infrastructure will be coordinated with the California Department of Technology (CDT) and the Third-Party Administrator to ensure it complements the statewide open-access middle mile network.

As suggested by Frederick L Pilot and SANDAG, the Commission will include whether last-mile projects propose to leverage the state-owned middle mile infrastructure as part of the application evaluation. Applicants will receive up to 10 points. However, if a proposed project is not in a geographic location that will benefit from the statewide open-access middle-mile network, an applicant may still receive credit.

12. Open Access

The ACR proposes several open access requirements for FFA grants.

First, middle-mile segments built using an FFA grant must be open access for the lifetime of that infrastructure, meaning that the grantee owning the infrastructure must offer nondiscriminatory interconnection and Internet access at reasonable and equal terms to any telecommunications service provider that wishes to interconnect with that infrastructure, wherever technically feasible. Additionally, the ACR proposes that pricing, terms, and conditions for other providers to interconnect shall be just, reasonable, and nondiscriminatory. FFA grant recipients must offer tiered pricing and a range of options to fit different business models, including similarly situated entities, such as a wholesale ISP, a government, and public anchor institutions (*e.g.*, a university or hospital). Pricing, tariffs, and the framework identifying standard terms and conditions

must be provided to the Commission's Communications Division as part of the FFA application for middle-mile funding and may be updated by the grantee. Terms and conditions should address essential elements of network operations such as cybersecurity, circuit provisioning, network outages, future capital investment costs, and operations and maintenance costs.

The ACR also proposes that the Commission require FFA grant recipients to 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.³⁵ In the event that the FFA grant recipient fails to comply with the open access requirement in accordance with the terms of approval granted by the Commission, or in the event that the FFA grant recipient does not negotiate in good faith with a requesting party, the requesting party may file a complaint with the Commission.

Finally, the ACR proposes to require FFA grant recipients to submit a confidential annual report for the life of the middle-mile infrastructure, detailing of the number of interconnection requests and executed service agreements. The report must include: date of request, requesting party, location of requested interconnection, service requested, outcome of request, pricing, tariffs (if applicable), and terms and conditions.

12.1. Party Positions

Los Angeles County asserts that all middle-mile funding should support publicly owned and open-access fiber and be available to low-income areas where many either do not have broadband or pay too much for it, given the

³⁵ Reasonable prices, terms, and conditions for last-mile provider access to middle-mile infrastructure may vary depending on local circumstances such as physical and network conditions, or the types of services and service levels requested by the last-mile provider.

County's goal to connect as many people as possible utilizing county-owned infrastructure to extend service to unconnected households. SCAG asserts open-access middle mile can decrease costs and combined open-access middle mile and last mile can promote competition and private investments, with cost savings that can be directed towards lowering subscription fees. Frederick L. Pilot opines that Commission should favor a wholesale network operator model with open-access last mile fiber. RCRC supports creating alternative rules for municipalities and tribal governments creating open access last mile networks."

CETF supports the proposal for including the open access information in an annual report.

12.2. Discussion

We adopt the proposed open-access requirements, with the clarification that our open access requirement for FFA grantees includes the requirement to provide dark fiber services.

13. Minimum Performance Criteria

The ACR proposes that all FFA projects meet the following minimum performance criteria:

- All projects exempt from the California Environmental Quality Act (CEQA) must be completed within 12 months, and all other projects shall be completed within 24 months after receiving authorization to construct.
- All applicants must commit to serve customers in the project area at the prices provided in the application for the life of the infrastructure.
- All households in the proposed project areas must be offered a broadband Internet service plan with speeds of at least 100 Mbps download and 100 Mbps upload, or speeds of at least 100 Mbps download and 20 Mbps upload if applicable.

- All projects must provide service at no higher than 100 ms of latency.
- Data caps are disfavored. If including a data cap an applicant must include a justification about how the cap does not limit reliability of the connection to the users. In any event, data caps shall provide a minimum of 1000 GBs per month.
- All projects must provide an affordable broadband plan, as defined in the Definitions, for low-income customers, California LifeLine, federal Lifeline service and the Emergency Broadband Benefit, or its successor.

The ACR also asks, if the Commission should consider applicants that propose to provide voice service or other services and what industry standards for safe and reliable service should the Commission adopt.

13.1. Party Positions

Parties propose several changes to the proposed minimum performance standards.

AT&T and CETF assert a 12-month construction timeline, even for CEQA-exempt projects, is too short and is inconsistent with federal guidance, and instead recommends a minimum construction timeframe of two years. San Francisco recommends at least 36 months for CEQA exempt projects and 48 months for non-exempt projects.

Verizon contends the Commission should recognize that 100 Mbps download and 20 Mbps upload is sufficient for projects that are using technologies other than fiber. CforAT opposes creating a blanket exception for projects using wireless technology, arguing that it would set a lower standard for one technology, especially in light of arguments raised by various wireless Internet service providers that there is wireless technology capable of symmetrical 100 Mbps speeds.

The Small LECs support requiring that any infrastructure funded by FFA grants include voice service offerings using that infrastructure. CCTA supports the proposed rule requiring an FFA grantee to offer voice service that meets federal 911 and backup battery standards. AT&T and Comcast argue the Commission should not require an FFA applicant to provide voice service or score an applicant that specifies it will provide voice any higher than any other applicant. Frontier favors the requirement of offering voice service, including VoIP, but does not support requiring battery backup. Joint WISPs note that fixed wireless service can provide voice service. TURN supports the Staff Proposal, though it suggests the Commission require applicants to describe existing obligations or legal requirements to offer voice, and that applicants distinguish between minimum service standards for performance facility, compared with services that will be offered over those facilities. TURN does not favor a blanket requirement that all applicants offer a voice service to qualify for funding, unless the applicant has preexisting obligations or a regulatory requirement to offer voice service.

TURN proposes the Commission award extra points or additional funding for applicants that agree to participate in state and federal LifeLine programs or CTF discounts or commit to offering an affordable voice service the same or better than existing state and Federal Communications Commission public purpose programs. Cal Advocates recommends the Commission set minimum annual low-income enrollment targets for FFA grantees and increase the target on an annual basis (for example, the Commission could set a target of 20 percent enrollment of low-income households in year one and then increase it by 20 percent each consecutive year).

CWA supports adopting appropriate labor standards that ensure both applicants and any of their subcontractors commit to high-road employment practices.³⁶ CWA also urges the Commission to require recipients to provide a project workforce continuity plan as contemplated in the Treasury guidance. CWA also recommends the Commission lower the threshold for providing prevailing wage certification or a project employment and local impact report from \$10 million to \$2 million for infrastructure projects.

CCTA and Comcast object to the proposed requirement that an FFA grantee commit to serve customers in the project area at the prices provided in the application for the life of the infrastructure, and instead suggest making the requirement for two years. CETF recommends making the requirement for three of four years.

CforAT urges the Commission to ensure that any measurement of the serviceable life of the infrastructure include the expectation that providers are regularly and effectively maintaining their networks. Santa Clara County

³⁶ See CWA's Opening Comments on ACR at 10. CWA urges the Commission to give preference to applicants who can demonstrate that the workforce performing the contract will meet the following criteria:

- High standards of safety training, certification, and/or licensure for all relevant workers, for example, OSHA 10, OSHA 30, confined space, traffic control, or other training, as relevant depending on title and work, and exemplary workplace safety practices;
- Professional certifications and/or in-house training to ensure that deployment is done at a high standard;
- In-house training programs with established requirements tied to certifications, titles, and/or uniform wage scales;
- Locally-based workforce that supports job pipelines for traditionally marginalized communities;
- Relevant work will be performed by a directly employed workforce or employer has policies and/or practices to ensure that any employees of contractors used meet the criteria as described above;
- No recent violations of Occupational Safety and Health Act, the Fair Labor Standards Act, Title VII of the Civil Rights Act of 1964, and state labor and employment laws.

recommends measuring serviceable life for wireline connections by the pole, conduit or other structure hosting the wire, or using the estimates provided by the FCC (projected life for conduit systems is 50-60 years), an audit of AT&T Nevada (50-year financial life of conduit) or the American Wood Protection Association (estimates wood poles useful life of 44.5 years). SBUA recommends measuring an infrastructure's serviceable life against its ability to offer 100 Mbps symmetrical speeds -- if the infrastructure is not technically capable of delivering those speeds or meet reliability criteria, it should no longer be considered serviceable.

Frederick L. Pilot encourages the Commission to reduce the latency standard to reflect the low latency fiber networks offer.

13.2. Discussion

Given the concerns various ISPs raise, we shorten the pricing commitment from the life of the infrastructure for services to five years with the option to adjust in accordance with the Consumer Price Index. Applicants must commit that the prices they propose to charge will not exceed the amount provided in their applications. Prices may be lowered without Commission approval, but may not be increased to more than the committed pricing. As noted in Section 8, applicants that commit to offering prices for a ten-year period, with the option to adjust in accordance with the Consumer Price Index, will receive up to an additional ten points. We also revise this requirement to provide grant recipients with the ability to file a request to waive this requirement with the Communications Division, should the need to raise their prices in the future arise.

In response to concerns raised by AT&T, CETF, and San Francisco, we extend the construction deadline for CEQA-exempt projects from 12 months to

18 months. In addition, FFA grant recipients may request an extension of time as needed, though grantees must be aware of the deadlines in federal statute.

Additionally, as part of the annual resolution process, providers may receive an extension of time. The shorter deadlines reflect the Commission's obligation to ensure these funds are expended in the time allotted by the federal government.

There is an urgency with which these funds must – and can – be expended. If an applicant demonstrates an inability to perform, the Commission must identify this with sufficient time to allocate funds to other projects or applicants before the funds are rescinded by the federal government.

Statute requires FFA projects to pay prevailing wages.³⁷ In response to CWA's request, we add that to the list of minimum performance requirements.

14. Affordability

The Interim Federal Rule encourages integrating affordability into the design of this program. With that in mind, the ACR requests comment on the following questions.

- How should the Commission define affordability?
- How should the Commission consider a preference or requirement for affordable offers that are not income-qualified?
- Should the Commission consider other low-income preferences or requirements as a percentage of the Federal Poverty Level? Or categorical eligibility such as any service connection in a Qualified Census Tract?
- How should the Commission consider low-income or affordable offers that allow for enrollment based on participation in any California public assistance program?

³⁷ California Labor Code, § 1720.

- What should be the term for which an affordable or low-income offer is provided and what is the rationale for the term?
- Is it reasonable to require applicants provide Lifeline services, as well as the Emergency Broadband Benefit, or its successor?

14.1. Party Positions

Parties offer different options for defining affordability. AARP recommends the Commission calculate an “acceptable broadband burden” that considers the cost of equipment and any monthly fees, as well as decreases in the price of Internet service, and supports prioritizing non-commercial providers as a way to lower prices and to encourage adoption. AARP also notes that affordability is affected by time spent on applying for subsidized broadband. San Francisco recommends the Commission consider offering free or low-cost options for qualifying low-income consumers, and also ensuring long-term commitments from ISPs to making affordable services available. CVAG proposes the Commission define affordability as a percentage of household income, and should reflect an area’s Median Income, similar to how affordable housing is defined (not more than 30 percent of gross income towards housing costs). CforAT recommends including an affordability factor in the Commission’s evaluation of applications and using the definition and metrics of affordability adopted in the Commission’s affordability docket.³⁸ SCAG contends that open-access to middle mile infrastructure can decrease costs and, when combined with open-access to last mile, can promote competition and private investments, allowing cost savings to be directed towards lowering subscription prices.

³⁸ R.18-07-006.

LAEDC advocates for an affordability threshold that is “no higher than the FCC’s 2 percent threshold “and preferably lower to lessen the likelihood of low-income households having to cut other essential expenses to be able to afford Internet access. SBUA supports using the definition adopted in D.20-07-032, which defines affordability “as the degree to which a representative household is able to pay for an essential utility service charge, given its socioeconomic status.” SBUA recommends applying the three metrics specified in that decision: 1) the affordability ratio, 2) the hours at minimum wage, and 3) the socioeconomic vulnerability index, with goals also set for small businesses and diverse businesses. NCC encourages the Commission to adopt a broad definition of affordability to overcome barriers to access and adoption issues and also asserts that supporting community-backed initiatives like publicly owned networks will improve both the availability and the affordability of Internet service.

TURN proposes that the Commission identify needs of low-income communities where the lack of affordable voice and broadband communications services created a barrier to access, establish minimum standards for services offered over these facilities, and create benchmarks and ranges of affordable rates for services offered over the infrastructure built with this funding.

Some parties propose specific monthly rates for affordable service. TURN supports using the current CASF rates and terms as a useful benchmark, though TURN also asserts that the Commission should not look strictly at market rates of existing middle-mile services as a benchmark or definition of affordability. Cal Advocates supports requiring grantees to offer a low-income plan for \$15 per month, which offers speeds of at least 100 Mbps download and 20 Mbps upload, and 100 Mbps symmetrical if the project will offer plans at those speeds. NCC

contends that free and low-cost options, as well as adoption support, are necessary to ensure that all Californians can get online and that even \$10-\$15 per month may be too expensive for some individuals. Greenlining Institute proposes to define an affordable Internet service plan as one that provides service at \$10 per month at speeds sufficient for an entire household to connect to telehealth, teleworking, and remote learning. Currently, Greenlining Institute asserts this should be set at a minimum 50 Mbps, with speeds increasing as societal usage needs increase over time (Greenlining Institute estimates that an average internet user will need 150-500 Mbps download/100 Mbps upload speeds by 2025) and that the offer must be stand alone, without bundles. AT&T and Frontier oppose the proposal to require FFA grantees provide Internet service at an agreed-upon price for the life of the infrastructure. AT&T supports a two-year service agreement term in the Staff Proposal, or a term commensurate with FFA oversight. The Small LECs request an exemption for rate-of-return regulated utilities that specify they do not have to offer a particular rate for retail broadband to access FFA funding, arguing these companies should not be required to offer Internet access service at a loss.

AARP argues the Commission needs to regulate price and service subsidization; otherwise, AARP asserts that prices will continue to increase in non-competitive markets. CCTA opposes the proposal to require FFA grantees to offer a low-income Internet service plan for \$15 a month, asserting it will allow flexibility and not exclude low-income offers, such as the EBB program, with a different existing structure.

CETF and CforAT support the proposal. CforAT and San Francisco recommend the Commission award more points to applications that offer to

charge less. CETF also recommends that we require providers not to levy additional charges for the modem or for installation.

Comcast recommends the Commission adopt a requirement similar to the CASF Infrastructure Grant Account rules, which require all projects to “provide an affordable broadband plan,” but which do not define an “affordable broadband plan.” Instead, the rules require “low-income plans” that cost no more than \$15 per month.

Cal Advocates proposes that, to support enrollment to affordable plans, the Commission require all providers to partner with community-based organizations, local schools, and local governments administering low-income plans.

SCAG recommends an affordable rate of \$20 per month or free service for individuals residing in government-subsidized housing, and to waive the cost of installation and any fees.

CCTA contends there is no need to define “affordability” in this proceeding, given that this issue is being addressed in R.18-07-006. RCRC supports making broadband Internet services affordable but asserts the proposal’s affordability requirements aren’t achievable for networks operated by municipal agencies, and requests that the Commission consider a separate affordability metric for those types of networks. The Small LECs recommend the Commission prioritize deploying broadband Internet infrastructure now, and grapple with affordability issues later.

Several parties recommend using criteria besides income to determine affordability. AARP supports criteria such as for households with long-term health monitoring and health care requirements. SCAG recommends using criteria such as household poverty rates, neighborhood median income,

concentration of public housing, social service recipients, or a “predefined income hierarchy.” Greenlining Institute proposes that the alternative to income-qualified offers should be qualification via enrollment in a public benefits program, as well as using census tract qualification based on the affordability and social economic vulnerability of a census tract. In this same vein, the Commission should mirror the program eligibility from the California LifeLine program to provide the most options for California consumers. Santa Clara County recommends that, if the Commission limits eligibility, it should use criteria that do not require additional documentation to be submitted or complex verification processes, as these are barriers for low-income households. Comcast opposes giving preference to affordable offers that are not income-qualified, asserting this can lead providers to market-based pricing aimed at consumers otherwise unwilling to subscribe. Comcast also asserts that giving such a preference would be outside the Commission’s authority and would be preempted by federal law.

AARP supports categorical eligibility for households in a qualified census tract and could even extend that to ESJ and Tribal communities. San Francisco asserts there is too much variance among the residents within a census tract (both very low-income individuals and individuals with very high income can be located within the same tract) for that geographic span to be used accurately.

Regarding how to consider low-income offers based on participation in low-income programs, AARP, Cal Advocates, CVAG, LAEDC, SANDAG, SCAG, and CforAT support making customers that participate in any California public assistance program automatically eligible for affordable offers. These programs can include, among others, Temporary Assistance for Needy Families, Cash Aid,

Medi-Cal, and Cal-Fresh/SNAP, CalWORKs, and individuals receiving Section 8 vouchers and or other public housing benefits.

Regarding the term length of affordable offerings, AARP and SANDAG support an indefinite term, while CVAG recommends at least two years, and LAEDC contends the affordable plans should be for as long as practically possible.

Several parties support requiring FFA grantees to participate in some low-income program. AARP, CETF, NCC, SBUA, and CforAT support requiring FFA grantees to offer a low-income plan, like LifeLine providers or EBB recipients must. Comcast opposes the requirement to offer LifeLine service, but not EBB, and recommends including other qualifying programs targeting low-income customers, such as Comcast's Internet Essentials. Cal Advocates suggests the Commission not require FFA grant recipients to offer LifeLine until after the Commission revises the California LifeLine program to include standalone broadband plans. AT&T asserts that if a provider participates in the EBB, it should not also be required to participate in the federal Lifeline or state LifeLine programs. In addition, participation in the federal Lifeline program under current rules would require a provider to become an Eligible Telecommunications Carrier, which Treasury's Final Rule does not require, and which would likely deter many providers from participating in the FFA.

14.2. Discussion

The Final Rule finds that "a project cannot be considered a necessary investment in broadband infrastructure if it is not affordable to the population the project would serve," and requires:³⁹ 1) grantees to participate, for the life of

³⁹ 87 Fed. Reg. 4418 (January 27, 2022).

the infrastructure, in the Federal Communications Commission's (FCC) Affordable Connectivity Program (ACP), or otherwise provide access to a broad-based affordability program to low-income consumers in the proposed service area of the broadband infrastructure that provides benefits to households commensurate with those provided under the ACP;⁴⁰ 2) that services include at least one low-cost option offered without data usage caps, and at speeds that are sufficient for a household with multiple users to simultaneously telework and engage in remote learning;⁴¹ and 3) that recipients report speed, pricing, and any data allowance information as part of mandatory reporting to Treasury.⁴²

We require FFA grantees to participate in the federal ACP or otherwise provide access to a broad-based affordability program to low-income consumers. We revise the application evaluation criteria to reflect that this is no longer optional. We also revise the application evaluation criteria to provide grantees that participate or commit to participating in the federal Lifeline program or the California LifeLine program 10 points. This is in recognition that these public programs provide access to vital telecommunications services, in addition to the ACP.

We encourage all applicants to include a generally available low-cost broadband plan. Applications will receive 20 additional points for offering a generally available low-cost broadband plan for the life of the infrastructure that includes the following minimum standards:

- Must not include data usage caps;

⁴⁰ *Id.* at 4418, 4421.

⁴¹ 87 Fed. Reg. 4408 (January 27, 2022).

⁴² *Id.*

- Must offer speeds that are sufficient for a household with multiple users to simultaneously telework and engage in remote learning, which is defined as 50/20 Mbps;
- Must be no more than \$40 per month;
- The grantee must not charge for installation or setup;
- The grantee must provide a free modem or router; and
- The service does not require a minimum term.

Grant recipients have the option to adjust the \$40 per month plan in accordance with the Consumer Price Index. Grant recipients also may submit a request to the Communications Division to waive or modify these requirements in the future, should the need to adjust these requirements arise. The Commission will update these requirements as needed. Since applications that receive lower scores reflect a reduced commitment to provide public benefits, CD Staff may make recommendations to the Commission via resolution to reduce the percentage of public funding, commensurate with the reduced public benefit.

Qualifying low-income households may apply the ACP to a grantee's low-cost offer. The Infrastructure Act includes the requirement that a provider participating in the ACP "shall allow an eligible household to apply the affordable connectivity benefit to any internet service offering of the Participating provider, at the same terms available to households that are not eligible households."⁴³ The FCC ACP rules implementing this requirement specify that a household qualifying for the ACP may apply the benefit to "any broadband internet plan that a provider currently offers to new customers."⁴⁴ For

⁴³ 47 U.S.C. § 1752(b)(7).

⁴⁴ Affordable Connectivity Program Emergency Broadband Benefit, Report and Order and Further Notice of Proposed Rulemaking, Federal Communications Commission (Jan. 21, 2022), para. 94, <https://docs.fcc.gov/public/attachments/FCC-22-2A1.pdf> (accessed Jan. 28, 2022).

a qualifying household applying the ACP \$30 non-Tribal benefit to a low-cost broadband plan the resulting price would be around \$10—consistent with commenters noting plans with a price in the range of \$5-15 would make broadband that meets “an adequate minimum level of service”⁴⁵ more accessible to low-income households.

We decline to adopt a definition for “affordability” in this decision that is different from the Commission proceeding dedicated to this matter. D.20-07-032 defines affordability as “the impact of essential utility service charges on a household’s ability to pay for non-discretionary expenses.”⁴⁶ We decline to adopt specific requirements about whether the low-cost \$40 amount includes other provider-imposed charges such as administrative fees or regulatory cost recovery charges, though the Commission will continue to watch for anti-consumer behavior in the implementation of low-cost broadband plans, and track federal and state dockets including the FCC broadband label docket⁴⁷ and Commission surcharge proceeding⁴⁸ for relevant consumer protections and other requirements.

15. Reimbursable Expenses

The ACR proposes that the Commission reimburse the following costs:

- Costs directly related to the deployment of infrastructure;

⁴⁵ 87 Fed. Reg. 4408 (January 27, 2022).

⁴⁶ See Appendix A at 6.

⁴⁷ See Empowering Broadband Consumers Through Transparency, CG Docket No. 22-2, Notice of Proposed Rulemaking, Federal Communications Commission (Jan. 27, 2022), <https://docs.fcc.gov/public/attachments/FCC-22-7A1.pdf> (access Jan. 28, 2022).

⁴⁸ See Order Instituting Rulemaking to Update Surcharge Mechanisms to Ensure Equity and Transparency of Fees, Taxes and Surcharges Assessed on Customers of Telecommunications Services in California, Rulemaking 21-03-002 (Mar. 4, 2021).

- Costs to lease access to property or for Internet backhaul services for a period not to exceed five years; and
- Costs incurred by an existing facility-based broadband provider to upgrade its existing facilities to provide for interconnection.

Per federal rules, the Commission will reimburse costs incurred during the period beginning March 3, 2021 and ending December 31, 2024. Additionally, administrative expenses directly related to the project shall be capped at two percent of the grant amount and a maximum of 15 percent contingency on direct infrastructure costs.⁴⁹

15.1. Party Positions

Several parties suggest revisions to the proposed rules regarding what expenses FFA funds will reimburse. CENIC recommends the Commission reimburse approved grantees for Costs associated with the development of their grants. CETF urges the Commission to increase the cap on administrative expenses in the range of eight to twelve percent, asserting that limiting administrative expenses to two percent is too low. CETF does not support the 15 percent contingency on direct infrastructure costs, given the materials and supply costs for broadband is going up. SANDAG, CETF, Santa Clara County and Frederick L. Pilot encourage the Commission to allow technical support to eligible applicants.

15.2. Discussion

We adopt the Staff Proposal without modification. It is imprudent to reimburse applicants for the cost of developing their application, particularly if

⁴⁹ We define administrative costs as “indirect overhead costs attributable to a project, per generally accepted accounting principles (GAAP), and the direct cost of complying with Commission administrative and regulatory requirements related to the grant itself.” Applicants seeking additional funds will require a Commission exemption included in a draft resolution.

the applications are not viable or successful. Further, the Commission envisions providing assistance directly to potential applicants, as well as making funds available for technical assistance grants to eligible local agencies and sovereign Tribal governments.

16. Information Required from Applicants

In summary, the ACR proposes requiring applicants to submit separate applications for any eligible project. Non-contiguous project areas may be considered as a single project. In order to be reviewed, all applications must include:

- A public project summary;
- Specific information Applicant Entity Information;
- A description of the provider's current broadband infrastructure and service within five miles of the proposed project and a description of other providers' infrastructure within the project area;
- The geographic location of all households and housing units and project related key network equipment;
- The median household income for each Census Block Group (CBG) that intersects the project area;
- An assertion that the applicant reviewed the wireline served status on the Broadband Map and determined that the broadband project area proposed is eligible, or the applicant will provide evidence to dispute that the area is served;
- A detailed deployment schedule;
- A detailed budget showing proposed project expenditures;
- A listing of all the equipment to be funded and the estimated useful life;
- A Letter of Credit if the applicant does not hold a CPCN;
- A pricing commitment;

- Marketing/Outreach plans;
- Government and community support;
- Funding sources for expenses not covered by the grant;
- Financial qualifications;
- A project viability forecast; and
- The following information:
 - Availability of voice service that meets California and FCC requirements for 9-1-1 service battery back-up;
 - Deployment plans for applicable Federal and state requirements;
 - A CEQA Attestation;
 - The Program Application Checklist Form; and
 - An affidavit.

Full details on each of the items listed above are in Attachment A of the ACR on pages 14-22.

16.1. Party Positions

AT&T asserts that providing major equipment expenses in an application are unnecessary details that is redundant with the general description of major infrastructure requirement. Further, the illustrative equipment listed are not “major equipment,” but customer premises equipment selected by the subscriber. Additionally, AT&T argues that Item 9.9 “Economic Life of All Assets to be Funded” should be deleted as irrelevant and unnecessary.

TURN urges the Commission to require applicants to include a “roadmap” or detailed explanation of how the applicant will use funding related to project expenses and associated timelines that are currently required, as well as an explanation for why CASF Infrastructure Grant account funds would not be more appropriate source of funds for upgrades.

Verizon supports requiring a FFA applicant to disclose other grants or public funds it has already received or expects to receive.

CETF recommends that the required Marketing/Outreach Plan be “in-language” when serving a population that is limited-English speaking, where applicable, and that the Marketing/Outreach Plan include a requirement to advertise affirmatively in a prominent fashion, affordable broadband offers.

Regarding the requirement for evidence of community support, AT&T and CCTA caution the Commission against weighing that support more heavily than the various technical deployment requirements. RCRC recommends requiring community support. San Francisco suggest requiring applications to include a letter of support from the executive of the jurisdiction (local or county) that would be served by project, with the letter containing sufficient details to ensure community leaders understand the scope of the proposed project. CETF counters that the proposal is not a requirement.

16.2. Discussion

The final adopted requirements, including all details regarding the information applicants must provide, are contained in Appendix A. We make the following refinements:

- As identified by AT&T, we correct the examples of major equipment expenses;
- We clarify the process by which an applicant would propose revising the area for which they are requesting funding;
- We revise the pricing commitment requirement to be consistent with the affordability requirements adopted in this decision;
- We revise the funding sources application item so that it is consistent with the requirements on leveraging other funds adopted in this decision;

- We clarify that newly formed organizations applying for funding should submit financial statements of the parent or sponsoring organizations, including an explanation of the relationship between those organizations;
- We remove the requirement that an application include the checklist, as applications will be filed online; and
- Local and Tribal governments are exempt from the requirement to obtain a letter of credit, provided they can demonstrate administrative capability and expertise in financial administration; demonstrate relationships with financial advisors; in-house or contracted expertise in evaluating broadband infrastructure project feasibility; and demonstrate relationships with, and support from, experienced public or nonprofit broadband system operators. These types of applications must be approved by Commission resolution.

17. Application Submission Timelines

The ACR proposes that the Commission accept FFA applications on a quarterly basis (i.e., January 1, April 1, July 1, and October 1). Applicants should electronically file complete applications at <http://www.cpuc.ca.gov/puc/> and mail a separate hard copy to the Communications Division, Attn: California Advanced Services Program, and mail another hard copy to the Public Advocates Office at the Commission. Since applications are not filed with the Commission's Docket Office, they will not be assigned proceeding number(s).

17.1. Party Positions

Frontier and AT&T support quarterly application windows. SANDAG urges the Commission to allow applicants enough time to find appropriate ISP partners to avoid precluding public entities from participating. CCTA recommends two application cycles each year to allow enough time to review and act on all pending applications and eliminate confusion for potential applicants as to which areas remain eligible for a FFA grant.

17.2. Discussion

We revise the proposed rules to no longer require mailed hard-copy applications. At the beginning of each application cycle, CD Staff will serve instructions regarding how to file electronic applications on the service list for this proceeding, the service list for the CASF proceeding, and the CASF Distribution List. CD Staff will announce application submission and other deadlines. Applications should be due every six months and staff will target to review applications in no more than six months. Organizations will have 14 days, inclusive of holidays and weekends, to file objections to applications.

18. Posting of Applications

The ACR proposes that CD Staff post a list of all pending FFA applications, objection deadlines, and notices of amendments to pending applications on the FFA webpage. CD Staff also will serve notice of the applications, deadlines and amendments on the existing CASF Distribution List, given the number of interested individuals and entities that already are part of that list. CD Staff will post Application Summaries and Maps to the Commission website and notify CASF Distribution List within 10 days after the application submission deadline. The deadline to submit objections to any applications will be 10 days after the notice is served. In the event any date falls on a weekend or holiday, the deadline is the next business day.

The Commission will endeavor to serve notice of applications and any amendments to an application for project funding to those on the service list for this proceeding, the service list for the CASF proceeding, and the CASF Distribution List, and post on the FFA webpage at least 30 days before publishing the corresponding draft resolution.

18.1. Party Positions

No parties filed comments on this proposal.

18.2. Discussion

The Commission adopts this proposal.

19. Application Objections

The ACR proposes to provide a period during which interested persons may review FFA grant applications and file written comments objecting to an application under review. The Commission will consider these comments in reviewing the application. Any party that objects to a proposed area as already served must provide definitive evidence that the area is in fact already served.

An objection must identify and discuss an error of fact, or policy or statutory requirement that the application has contravened. Comments must be submitted no later than 21 calendar days from when the entity serves notice of the application on the CASF Distribution List, or a different date set by CD Staff. Comments filed after the deadline will be deemed denied. Comments must be filed with the Commission and served on the CASF Distribution List.

Consistent with the Interim Final Rule, grant recipients should avoid investing in locations that have existing agreements to build reliable wireline service with minimum speeds of 100 Mbps download and 20 Mbps upload by December 31, 2024, in order to avoid duplication of efforts and resources. An objection asserting an existing agreement to build such a wireline service should provide evidence of the existing agreement, and plans indicating the construction route, service area boundaries, and other pertinent construction details. Consistent with the Interim Final Rule, it “suffices that an objective of a project is to provide service to unserved or underserved households or businesses. Doing so may involve a holistic approach that provides service to a

wider area in order, for example, to make the ongoing service of unserved or underserved households or businesses within the service area economical.

Unserved or underserved households or businesses need not be the only households or businesses in the service area receiving funds.”⁵⁰ As such, a project is not disqualified by proposing to provide service to served households.

An objection asserting existing wireline communications infrastructure meets or exceeds the 25/3 Mbps unserved definition may still be provided. These objections must include the following information to be considered:

- An attestation that all information provided is true and accurate in accordance with Rule 1 of the Commission’s Rules of Practice and Procedure;
- An attestation that the households identified are offered service and have the capability to reliably receive minimum speeds of 25 Mbps download and 3 Mbps upload;
- The geographic location of all households it serves in the area(s) for which the objection is filed. This information must be provided in a plaintext, comma-separated values (CSV) file, that contains geo-located street address information, including latitude and longitude coordinates;
- The number of subscribers and the level of service subscribed to in the area being disputed. Additionally, Commission staff may request billing statement information to verify subscribership. This information shall be submitted unredacted to the Commission under seal;
- Permits, easements, or pole attachment applications submit and approved when infrastructure was built; and
- Pictures of provider infrastructure in the area (i.e., wires, huts, vaults, etc.).

⁵⁰ See, FAQ Question 6.9.

The ACR proposed that comments that do not meet these requirements be deemed denied, that the Commission will only accept public comments and that objections based upon confidential and other non-public service data not be given weight in the evaluation process.

An applicant may respond to any objection filed by an interested party within 14 days. A response to an objection must provide a public notice on the CASF Distribution List.

CD Staff will review this information, along with the applicant's documentation, as it develops its recommendations to the Commission for the disposition of each application.

19.1. Party Positions

TURN asserts that the Broadband Map does not necessarily demonstrate minimum speeds at any given time, and that both applicants and objectors should be required to submit evidence (speed, jitter, and latency tests) to determine if the broadband availability provides 25/3 Mbps at all times. CCTA contends the Commission should require that both applicants and objectors submit "credible and verifiable" evidence about served status of a proposed project area with a comparable attestation of the accuracy of all submitted information. CCTA argues the Staff Proposal includes disparate evidentiary standards heavily biased toward determining an area to be unserved, which it declares is unfair, unjustified, and contrary to statute. SANDAG contends that if an entity wants to contest an application, it should be that entity's responsibility to show the project area is served and has widespread adoption by providing households subscribed, service quality and service costs.

Regarding objector deadlines, Comcast and CCTA note the inconsistency in the Staff Proposal (Section 10 allows 10 days and Section 12 allows 21 days),

and assert that neither of 10 days nor 21 days is sufficient time for ISPs to prepare objections, given the expected high volume of applications, and instead ask that the deadline for submitting objections be at least 30 days. CforAT generally supports the proposal to allow objections, though it asserts that a 21-day objection period may allow some ISPs to upgrade service and block applications. To avoid this, CforAT recommends the Commission require the objecting ISP to show served households at the time the application is filed and have a high-ranking executive attest to that fact.

CCTA and Comcast support eliminating the requirements that objections must include permits, easements, or pole attachment applications and pictures as evidence for disputing unserved status, arguing these requirements are unnecessary and would disadvantage objectors due to the time involved in collecting that information. Comcast requests the Commission allow objectors to submit competing speed tests to challenge CalSPEED as well as qualitative information (e.g., community interviews and testimony re served speeds).

CforAT supports the proposal to use only information that is available to the public. CCTA and Comcast argue the Commission should ensure the confidentiality of customers' personally identifying information and critical infrastructure information that is included in an objection. Joint WISPs contend the information provided by an objector should remain confidential or released information should be redacted.

Comcast opposes the requirement to include a Rule 1 attestation in an objection, asserting it is unnecessary.

SBUA recommends the Commission prohibit formal objections to wireless broadband applications in locations where geography, topography, or cost prohibitive implementation may render wireline broadband impractical.

CETF notes that a weblink to the CASF Distribution List should be provided at the end of the second paragraph where it is referenced.

19.2. Discussion

The Commission adopts the proposed rules on application objections with revisions updating the language to reflect the Final Rule.

We note that federal rules grant the Commission broad discretion to implement these rules. We disagree with CCTA's argument that the proposed rules for application objections are heavily biased towards determining an area to be unserved. That contention ignores the fact that the initial determination of whether an area is served or unserved is based entirely on the data an ISP submits to the Commission as part of its annual broadband data collection. If an area is eligible, at least initially, it means either that an ISP did not indicate that it served the area in question at served speeds, or CD Staff was unable to validate the data the ISP submitted.

We revise the objection requirements to also require an attestation asserting that households are offered broadband service at speeds of 100/20 Mbps or 100/100 Mbps. This more robust information (on whether a location is offered 25/3 Mbps, 100/20 Mbps, or 100/100 Mbps) will allow the Commission to better understand broadband service in a given community.

With our revisions, objections must include the following information:

- An attestation that all information provided is true and accurate in accordance with Rule 1 of the Commission's Rules of Practice and Procedure;
- An attestation that the households or locations identified are offered service and have the capability to reliably receive minimum speeds of 25 Mbps download and 3 Mbps upload by a wireline service provider;

- An attestation as to whether or not the households or locations identified are offered service and have the capability to reliably receive speeds of at least 100 Mbps download and 100 Mbps upload or, or at least 100 Mbps download and 20 Mbps upload and information on why provision of 100 Mbps upload is not practicable.
- The geographic location of all households or locations it serves in the area(s) for which the objection is filed. This information must be provided in a plaintext, comma-separated values (CSV) file, that contains geo-located street address information, including latitude and longitude coordinates;
- The number of subscribers and the level of service subscribed to in the area being disputed, including customer billing statements to verify subscribership. Unredacted customer bills shall be filed under seal and kept confidential; and
- At least two of the following: (1) permits, (2) easements, or (3) pole attachment applications submit and approved when infrastructure was built; and (4) pictures of provider infrastructure in the area (*e.g.*, wires, huts, vaults, etc.).⁵¹

In response to comments from Comcast, noting the inconsistencies with the amount of time provided to submit objections, we revise program rules to allow objectors 14 days to file their objections. In the event the fourteenth day falls on a weekend day or holiday, objections are due the next business day.

While some parties suggest 30 days would be more reasonable, we find that the accelerated timeline to expend ARPA funds necessitates a shorter timeframe.

We dismiss CCTA's opinion that the Commission is required to keep much of the data supplied as part of an application objection confidential. CCTA contends that the Commission should clarify that customer bills, service

⁵¹ An example to meet the picture requirement is a street-view image using Google Maps that contains poles that the objector has fiber attached.

locations, pole attachment applications and permits, and granular subscriber data will be afforded confidential treatment and that any customer bills provided to staff can be redacted as needed to comply with state (and federal) customer privacy requirements.⁵² Below we discuss each issue, relying on statute and previous Commission decisions.

Regarding whether or not to disclose pole attachment applications/agreements, the Commission concluded the following in D.21-10-019:

It is reasonable to conclude that the five major pole owners and/or attachers have not demonstrated that the attachment data required by this decision is confidential, trade secret protect, privileged, exempt from disclosure from Section V (Nondisclosure of the Commission's Right-of-Way Rules), or protected from disclosure by national security concerns. Any of the five major pole owners and/or attachers may renew their request to prevent the disclosure of their data attachment information by filing a motion and provide the necessary granular information and declaration to support the confidentiality request.⁵³

We adopt the same rebuttable presumption here, allowing ISPs objecting to a FFA application relying on a pole attachment application to file a motion for confidential treatment and provide the necessary granular information and declaration to support that request, in accordance with the Commission rules regarding confidential submissions. When the Commission reaches a determination on those motions as part of Investigation (I.) 17-06-027 and I.17-06-028, those rules will apply here.

⁵² *Comments of the California Cable and Telecommunications Association on Proposed Decision*, filed March 22, 2022, at 11-12.

⁵³ Conclusion of Law 21.

While customer bills must be kept confidential because those documents contain Customer Proprietary Network Information (CPNI), an ArcGIS-compatible file containing serviceable addresses/locations, or a map displaying this data, does not. These files do not include the name of the resident at the address, if they subscribe to Internet service, the ISP they subscribe to, how much their monthly bills are, their data usage or search history, or other information that may constitute CPNI. Permits also do not contain CPNI. Thus, we see no reason to not disclose this information based on that claim.

In D.20-12-021, the Commission analyzed in great detail a number of claims by telecommunications services providers regarding information that must remain confidential and other information that may be disclosed. One recurring theme throughout that decision is that information already in the public domain does not receive confidential treatment, as it does not meet the definition of a trade secret,⁵⁴ nor does it meet the definition of “critical infrastructure information.”⁵⁵ Permits generally are already in the public domain. Deployment/serviceable address data also is in the public domain. The California Broadband Availability Map provides the census blocks where an ISP claims to offer service. Therefore, we see no reason to not disclose permits and broadband deployment/serviceable address information relying on their status as trade secrets or critical infrastructure information, since they do not meet the definition of either category.

⁵⁴ See D.20-12-021 at 21.

⁵⁵ *Id* at 29. For a thorough discussion of the applicable laws related to public access to government records and requirements for confidential treatment of information submitted by utilities, see D.20-12-021, at pp. 9-19. See also pp. 18-35 for an overview of the applicable standards governing confidentiality claims based on personal customer information, trade secret privileges, the Critical Infrastructure Information Act of 2002, and the California Public Records Act balancing test under Gov. Code § 6255(a).

One exception to our finding is that the number of subscribers provided by an ISP objecting to a FFA application may be submitted with a request for confidential treatment pursuant to the requirements of General Order (GO) 66-D. The Commission would need to analyze this data in greater detail, including if this information meets the definition of trade secret, before ordering its disclosure.

20. Ministerial Review

The ACR proposes that the Commission delegate to CD Staff the authority to approve applications, including determinations of funding, that meet all of the following criteria:

1. The applicant meets the program eligibility requirements;
2. The application has not received objections or CD Staff has determined that the project area is unserved;
3. The total grant does not exceed \$25,000,000;
4. The project is exempt from CEQA, or approval letter must state that authorization to construct and release funds will be provided in a forthcoming resolution;
5. There are no competing applications for the same project area in the same application period; and
6. The proposed project costs \$9,300 per household or less.

Applications not meeting these criteria may only be approved by the Commission via resolution.

20.1. Party Positions

Parties disagree on the overall grant limit for ministerial review. AT&T suggests the Commission increase the monetary eligibility per household and maximum grant amount thresholds to \$75 million dollars. CETF recommends increasing the cap to \$100 million. CCTA and Comcast urge the Commission to reduce the overall grant amount threshold to \$10 million. CCTA also supports

reducing the per-household cost to not exceed \$9,300, to align with CASF Infrastructure Grant Account criteria. CETF and Santa Clara County support increasing the per household cap to \$15,000 per household, to account for the increase in the cost for materials and labor. South Valley Internet and LCB Communications suggest increasing the cap to \$13,000 per household.

CCTA also claims Section 3 of the Staff Proposal would potentially give CD Staff unfettered discretion to reject any application, determine all funding amounts, and negotiate all grant terms with each applicant and raises serious questions of unlawful delegation of authority to CD Staff. RCRC asks the Commission to not require a per-household cost projection as an evaluation point for application review or approval, arguing it will disadvantage low-density rural areas that have historically lacked adequate service, given that the least served areas will have a very high per-household costs and need FFA subsidization. RCRC asserts these areas will require ministerial review as the projects will likely take the longest to build

AT&T recommends the Commission augment the ministerial program to establish a process whereby an applicant, who commits to bring broadband at a per-household cost at or below the threshold and provides a general project time and material estimates, would be relieved of specific application and reporting requirements and instead paid upon completion.

20.2. Discussion

The Commission adopts the ministerial review rules with the following additions:

- Applications that propose to leverage funding from other state or federal programs may not be approved by ministerial review;

- Applications with proposed project areas that overlap areas with existing commitments to provide broadband Internet service that is reliable and offer speeds of 100/20 Mbps may not be approved by ministerial review;
- Applications that propose project areas that include areas that have been identified by CD Staff as having an existing provider that offers 25/3 Mbps wireline service (*e.g.*, projects designed to improve economies of scale of existing projects, or areas in which the existing provider does not provide reliable service) may not be approved by ministerial review; and
- Applications that request a waiver of any program requirement may not be approved by ministerial review.

With these revisions, the Commission delegates to CD Staff the authority to approve applications that meet the requirements of the Ministerial Review section in the adopted rules. We firmly dismiss CCTA's opinion that the proposed or adopted rules represent an unlawful delegation of authority to CD Staff. The Commission has previously found that industry division staff may approve applications and other filings after the Commission adopts a specific standard for approval,⁵⁶ including other public purpose programs, such as the CASF Infrastructure Account. Further, we note the area of significant concern to providers, including the cable companies that are members of CCTA, is the initial determination of project area eligibility, which has been ministerial in CASF for many years. A ministerial review process will help meet the short deadlines set by federal law.

21. Reporting Requirements

The ACR proposes to require grantees to file progress reports on a bi-annual basis. These reports will be publicly posted by the Commission. Progress

⁵⁶ See D.09-05-020 at 2-3; D.07-09-018 at 18, n.34; D.18-12-018 at 25-26, Conclusion of Law 2.

reports are due on March 1 and September 1 of each year. In the event either date falls on a weekend or holiday, the reports are due the following business day.

Details on the information the progress reports shall include are found in Appendix A.

Grantees also must submit completion reports prior to receiving the final payment. Details on the information to include in project completion reports are in Appendix A.

Pursuant to Pub. Util. Code § 281(l), grantees must report monthly to the Commission all of the following information throughout the construction phase:

- (A) The name and contractor's license number of each licensed contractor and subcontractor undertaking a contract or subcontract in excess of twenty-five thousand dollars (\$25,000) to perform work on a project funded or financed pursuant to this section;
- (B) The location where a contractor or subcontractor described in subparagraph (A) will be performing that work; and
- (C) The anticipated dates when that work will be performed.

The Commission will, on a monthly basis, post the information reported pursuant to this subdivision on the commission's FFA internet website.

21.1. Party Positions

Parties disagree on the frequency of reporting requirements. Frederick L. Pilot supports the semiannual reporting requirement. AT&T recommends the reporting frequency either be quarterly, annually, or only on upon completion for projects approved via the ministerial review process. Cal Advocates urges the Commission to require progress reports, not just completion reports. Verizon and Frontier urges the Commission to avoid onerous reporting requirements and instead adopt minimal requirements that

comply with federal laws on FFA. Verizon recommends the Commission delete proposed categories of information such as the number of paying subscribers enrolled in the service, number of low-income or affordable plan customers enrolled. Verizon also suggests the Commission provide flexibility in the speed measurements for the speed tests, similar to what the FCC has recognized that the range of speed thresholds may be met for speed tests in the Connect America Fund program and allow 80 percent of speed tests. Verizon also asserts that some of the information contained in the reports are “competitively sensitive,” such as the number of paying subscribers, and therefore the reports should not be made public on the Commission’s website.

Cal Advocates recommends the Commission require FFA grant recipients to file a Tier 2 Advice Letter on an annual basis to report on the following items:

- the number of customers that have been notified of the low-income plans and the form of notifications used;
- the number of customers that have signed up for the plans;
and
- the number of customers that have cancelled their plans, until four years after the recipients have met the enrollment targets.

If a grant recipient cannot meet its enrollment target, Cal Advocates recommends the Commission require it to meet with the California LifeLine Administrator to discuss how to meet the target. If the grant recipient still fails to meet them, it should be penalized via resolution. Also, Cal Advocates supports requiring FFA grant recipients to provide to the Commission a web link with information on the affordable plan. The web link should provide all information on the plan, ways to sign up, and necessary forms.

CETF suggests that for items such as commitments on rates, affordable broadband plan, open access, and marketing/outreach a brief annual report could be filed where the grantee reports on its compliance with its commitments and signs it under penalty of perjury.

Santa Clara County recommend continuing reporting requirements for affordability and price commitments should last for the life of the longest commitment attached to a project.

SBUA asserts post-construction requirements should not have an end date and reporting should be maintained, arguing this will encourage broadband providers to maintain quality of service.

21.2. Discussion

Treasury's Final Rule requires that grant recipients report speed, pricing, and any data allowance information.⁵⁷ As such, FFA grantees will be required to report annually to the Commission's Communications Division the speed, pricing, and any data allowance information on all of their plans.

In addition, to address concerns raised by parties regarding the need for information on the subscribership and availability of affordable and income-qualified plans, we require recipients to report on the number of customers subscribed to the ACP, income-qualified and low-cost plans. We also require grant recipients to include in their report a web link with information on their income-qualified and affordable plans. The web link should provide all information on the plan, ways to sign up, and necessary forms.

In response to comments filed by Cal Advocates, we clarify in Appendix A that grant recipients must report the number of customers enrolled in low-

⁵⁷ 87 FR 4418.

income broadband plans. We define low-income broadband plans as income-qualified broadband plans offered to low-income customers.⁵⁸ We also clarify that grantees must submit project progress reports on a quarterly basis to be consistent with the Final Rule.

22. Payment

The ACR proposes to allow FFA grantees to make requests for payment as the project is progressively deployed. The prerequisite for first payment is the submittal of a progress report to the Commission showing that at least 10 percent of the project has been completed. Subsequent payments are made at the following milestones: 35 percent completion, 60 percent completion, 85 percent completion, and 100 percent completion. The final 15 percent payment request (from 85 to 100 percent) will not be paid without an approved completion report. Payments must be based on submitted receipts, invoices and other supporting documentation showing expenditures incurred for the project in accordance with the approved FFA funding budget included in the FFA grantee's application.

If an application also meets the ministerial review criteria, a provider with a CPCN that wishes to front the full costs of a project in exchange for reduced reporting burdens may request an alternative payment structure. The one-time payment request must include a project completion report and receipts/invoices of major equipment and materials purchased, with labor costs and other items being line items reflecting the remaining total amounts charged to FFA.

⁵⁸ As defined in the Appendix, "low-income customers" are households with incomes that would qualify for CARE pursuant to Pub. Util. Code §739.1(a) and D.16-11-022 at 18 (or as updated in a successor decision). As noted above, for a household of four the income threshold is \$52,400 through May 31, 2021. The threshold is updated regularly in the CARE proceeding, A.19-11-003, et. al.

Staff must conduct a site visit to confirm project completion prior to authorizing payment and these reimbursements are still subject to audit.

Grantees shall submit the final request for payment within 90 days after completion of the project. If the grantee cannot complete the project within the 24-month timeline, the grantee shall notify the Commission as soon as they become aware that they may not be able to meet the timeline and provide a new project completion date.

If the recipient fails to notify CD Staff of any delays in the project completion and the project fails to meet the approved completion date, the Commission may impose penalties by resolution. This may include rescinding the grant. Invoices submitted will be subject to a financial audit by the Commission at any time within three years of completion of project. If portions of reimbursements are found to be out of compliance, grantees will be responsible for refunding any disallowed amounts along with appropriate interest at rates determined in accordance with applicable Commission decisions.

Per federal rules, all funds must be obligated within the statutory period between March 3, 2021 and December 31, 2024, and expended to cover such obligations by December 31, 2026.⁵⁹

In the event approved FFA projects have not made substantial progress in constructing the proposed infrastructure, the ACR proposes that on an annual basis, CD Staff draft a resolution for Commission approval that recommends modifications, revisions, and rescissions of grants not demonstrating substantial progress.

⁵⁹ See, FAQ Question 6.11.

22.1. Party Positions

AT&T asserts it is burdensome for grantees to produce project-specific receipts and urges the Commission to accept cost information from bulk purchase orders.

22.2. Discussion

The Commission adopts the proposed rules with the clarification that CD Staff will provide a template for payments that is consistent with the Treasury's Final Rule and this Decision. The Commission believes it is important to have project specific expenses, though it will endeavor to be flexible, in reviewing project expenditures, depending on the project and circumstances.

23. CEQA Payments

The ACR proposes that the Commission directly pay CEQA consultant costs. Following award of a grant the Energy Division CEQA Section Staff will obtain a contractor to review the CEQA documents for the project. The FFA will pay directly the project's CEQA PEA preparation costs, but those costs will be identified as costs associated with the grant and will have no effect on the applicable shares of grantee assigned and program supported total project costs. The applicant may file with the Energy Division's CEQA Section a completed CEQA review conducted by another agency acting as the Lead Agency pursuant to CEQA. Should this occur, grantees may request funds to pay for preparation of a PEA.

23.1. Party Positions

No party filed comments.

23.2. Discussion

The Commission adopts this proposal.

24. Execution, Performance and Grant Termination

The ACR proposes that CD Staff and the grantee shall determine the project start date after the grant recipient has obtained all approvals. Should the recipient or its contractor fail to commence work at the agreed upon time, the Commission, upon five days written notice to the FFA recipient, reserves the right to terminate the award.

If the FFA recipient fails to complete the project, in accordance with the terms of approval granted by the Commission, the FFA recipient must reimburse some or all of the funds that it has received. The FFA grantee must complete all performance under the award on or before the termination date of the award.

Failure of a grantee to comply with the terms of the grant, provided in this decision, and the US Treasury Final Rule, in the Commission's Order approving the grant, or in the grant Agreement included as part of projects approved by CD Staff using its ministerial review authority, may result in cancellation of the award. The Commission or the Recipient may terminate a grant award, at any time by delivering 10 days written notice to the applicant/grant award recipient. If the applicant terminates the grant award, for any reason, it will refund to the Commission within 30 days of the termination, all payments made by the Commission to the applicant for work not completed or not accepted by the Commission. No less than 10 days before the termination, the applicant must notify the Commission in writing.

Grant recipients shall comply with the ARPA and all other applicable federal statutes, regulations, and executive orders.

24.1. Party Positions

Frontier argues the Commission should not adopt the proposal to allow the de-funding of approved projects, as some projects may encounter permitting

and other delays not under an applicant's control and makes applying less attractive.

24.2. Discussion

We revise the proposed rule to reflect that CD Staff will notify a grant recipient of its intent to prepare for Commission approval a draft resolution that would rescind a FFA grant due to nonperformance.

We decline to adopt Frontier's recommendation for practical reasons. Given federal time limits, the Commission must be aware of delays FFA grantees encounter. In some instances, Commission staff may be able to assist the recipient in moving the project forward. However, a logical consequence of projects that are not moving forward is that the Commission must repurpose those funds before they are rescinded by the Treasury. The Commission does not have the luxury of being overly patient with FFA grantees, since that may mean losing federal funds – and not being able to reimburse FFA grantees.

25. Transfer of Grant and/or Assets Built Using Grant Funding

The ACR proposes that prior to construction under the grant, and for up to three years after project completion, a grantee must notify the Commission within five days of determining that the grantee is planning to sell or transfer its assets. The grantee shall notify the Director of the Commission's Communications Division in writing of its intent to sell or transfer company assets within five days of becoming aware of these plans. Both the grantee and the new entity shall file an affidavit, stating that the new entity will comply with the requirements of the FFA award the Treasury Department, as well as other appropriate documentation, if any, requested by CD Staff. The grantee shall provide the Commission with any necessary documents requested in its review of the transfer. This will include all documents that are generally required of all

entities applying for the FFA grants. The grantee shall not transfer FFA funds or the built portion of the project to the new entity prior to Commission approval. If the Commission does not provide approval, it will rescind the grant.

25.1. Party Positions

CETF recommends the Commission require reporting only on transfer or sale of the assets for three years. To CETF, the issue is whether the applicant built the system with the intent to “flip it” for a profit. On commitments such as rates, affordable broadband plan, open access commitment, marketing/outreach commitment, a brief annual report could be filed where the grantee reports on its compliance with its commitments and signs it under penalty of perjury.

Cal Advocates proposes that the Commission require FFA grantees to obtain a waiver to sell FFA-funded infrastructure, and any sale should be subject to gain-on-sale requirements. Cal Advocates asserts that to ensure public interest when FFA funded infrastructure is sold, a waiver should hinge on the three requirements that were adopted for the Broadband Technology Opportunities Program: the transaction is for adequate consideration; the purchaser or lessee agrees to fulfill the terms and conditions relating to the project after such sale or lease; and the transaction would be in the best interests of those served by the project. Cal Advocates also argues that, in the case of depreciable assets, the Commission should receive 100 percent of the gains-on-sale, consistent with gain-on-sale regulations established in D.06-05-041. In the case of non-depreciable assets, Cal Advocates proposes that the Commission receive a percentage of the total gains-on-sale equal to the percentage of the grant’s contribution relative to the total project cost. Cal Advocates also supports any proceeds from asset sales that revert to the Commission through this gain-on-sale rule should be deposited in the CASF Infrastructure Grant Account.

AT&T recommends that because the SLFRF program requires all funds to be expended by December 31, 2026, that any post-construction requirements associated with receiving a FFA grant, including notification of transfers of control, should extend for no longer than four years, or, at the latest, until December 31, 2030.

25.2. Discussion

Provisions ensuring a sale or transfer is in the public interest are reasonable and make clear the Commission's expectations for grant recipients in such instances. In addition to these provisions, the Commission will require any grant recipients to file a Tier 2 Advice Letter with the following information: purchase price; copy of the agreement; binding agreement from the purchaser or lessee to fulfill the terms and conditions relating to the project after such sale or lease; and explanation as to how the transaction would be in the best interests of those served by the project. These provisions are in addition to – and do not supersede – existing laws, including but not limited to Pub. Util. Code §§ 851 and 854, that direct how the Commission addresses transfers of control.

26. Audit Compliance

The ACR proposes to require all applicants to sign a consent form agreeing to the terms and conditions of the Federal Funding Account. These will be stated either in the Resolution approving the project, or in a letter sent by Staff to the successful applicant.

26.1. Party Positions

No party filed comments.

26.2. Discussion

The Commission adopts this proposal with a revision clarifying that all recipients of federally funded grants exceeding \$750,000 will need to include a budget for a federal audit, consistent with the Final Rule.

27. Conclusion

The Commission adopts the revised rules contained in Appendix A. The revised rules exclude the application template and some application guidance from FFA Program Rules. The Commission delegates to CD Staff that authority to prepare and revise those documents as needed.

28. Comments on Proposed Decision

The proposed decision of Commission President Alice Reynolds in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. The following parties filed comments on March 22, 2022: AARP; AT&T; CCTA; CSAC; CforAT; Charter and Time Warner; City and County of San Francisco; Foothill De Anza Community College District; Frontier Communications; Great Public Schools Now (GPSN); NDC;

Placer County; Cal Advocates; RCRC; SBUA; the Small LECs; UCAN; Verizon Wireless (Cellco Partnership); and the Yurok Tribe. On March 28, 2022, the following parties filed reply comments: AT&T; CCTA; CETF; CforAT; Charter-Time Warner; Frontier Communications; NDC; Cal Advocates; SBUA; the Small LECs; TURN; and Verizon Wireless (Cellco Partnership).

Several parties ask the Commission to revise its allocation of funding between urban and rural counties, to pick another method for allocating the funding, or to use different data. To begin, statute specifies the data this Commission must use when determining each county's "proportionate share of... households without access to broadband internet access service with at least 100 megabits per second download..."⁶⁰ We recognize, as do several parties, that

⁶⁰ Pub. Util. Code §§ 281(n)(3)(A)(ii) and 281(n)(3)(B)(ii).

there is not a perfect way to divide the funds in a manner that also is consistent with statute. We believe the method we choose is the most reasoned and reflects the reality that more unserved households are in urban counties than in rural counties, while building or extending broadband networks in rural counties general costs more than in urban. As CSAC also notes, there are additional funding opportunities available for last mile broadband investments, including other programs that were expanded or newly created by SB 156, such as the Broadband Infrastructure Grant Program, the Broadband Loan Loss Reserve Fund, and the Broadband Public Housing Account. In addition, California will be eligible for additional federal funding as part of the Infrastructure Investment and Jobs Act, as well as future rounds of the Rural Digital Opportunity Fund. These programs do not have the short deadlines attached with FFA funds, and will provide additional opportunities for local governments, advocates, and providers to receive funding necessary to provide service to all unserved communities in the state.

In response to comments and reply comments, especially those filed by several ISPs, , in opposition to both the proposed ten-year price commitment requirement and the affordable low-cost broadband plan requirement, we revise both of these requirements, as well as the application scoring criteria. We require FFA grantees to include in their applications a commitment to not increase pricing for a five-year period for their existing service plans. As several parties note, ISP offerings change with time, and speeds offered should increase substantially over those offered today, including new multi-gigabit services that become feasible with new protocols, infrastructure and standards, or modes of delivering service. Thus, this requirement does not apply to substantially different plans, since an ISP may not know at the time of its application if it will

be offering that plan. We also wish to incent applicants to commit to a longer pricing commitment of ten years, and will provide those applications with up to an additional ten points. The Commission has no intention of this requirement hampering the ability of applicants to develop sustainable networks. Should an externality arise beyond the grant recipient's control (*e.g.*, inflation), they may seek a modification of this requirement with the Commission's Communications Division. Waivers must be approved by the Commission as part of the resolution process. Since applications that receive lower scores reflect a reduced commitment to provide public benefits, staff may make recommendations to the Commission via resolution to reduce the percentage of public funding commensurate with the reduced public benefit.

We remove the requirement to offer an affordable low-cost broadband plan. Applications proposing plans that offer speeds of at least 50 Mbps download and 50 Mbps upload for no more than \$40 per month will receive 20 additional points. These applicants may offer plans with higher speeds or at a lower cost. FFA grantees have the option to adjust plans in accordance with the Consumer Price Index.

In response to concerns raised by parties regarding the impact on affordable broadband service should the ACP program end, as well as on FFA grantees, the Commission will identify a successor low-income subsidy program that FFA grantees must participate in.

In response to comments from the Yurok Tribe, we clarify that California tribal governments, as well as their wholly-owned tribal corporations and tribal non-profits, are the sole entities that may receive credit in the "Type of Partnership" category for applications proposing to build a broadband network owned, operated by, or affiliated with a California tribal government, their

wholly-owned tribal corporations or tribal non-profit organization, on tribal lands. In response to the concerns raised by the Yurok Tribe, and consistent with Commission practice, applicants seeking to offer service on tribals lands are strongly encouraged to consult with those tribes ahead of filing their applications. We also modify our performance requirements of FFA grantees offering service on tribal lands to mandate consultation with those tribes after FFA grant approval. If a Tribe and other entities apply for the same proposed funding area which includes Tribal land, then special consideration will be given to the Tribal applicant.

RCRC requests the Commission establish a “Public Right of First Refusal” process for local governments with identified plans to deploy broadband services in a priority area, asserting the proposed FFA program requirements place public providers at a disadvantage. For example, since local governments typically do not have CPCNs, the proposed rules would require local governments to acquire a letter of credit for the entire project cost, a significant expenditure. RCRC also contends that local governments are disadvantaged by the proposed ministerial review process, as their applications are unlikely to be eligible for ministerial review. To ensure a more level playing field for local governments seeking to offer broadband service, we adopt two revisions. First, we adopt RCRC’s proposal to require “local governments to demonstrate administrative capability and expertise in financial administration; demonstrate relationships with financial advisors; in-house or contracted expertise in evaluating broadband infrastructure project feasibility; and demonstrate relationships with, and support from, experienced public or nonprofit broadband system operators.” We apply this exemption to Tribal governments as well. These criteria are similar to CPCN approval requirements, though, like when the

Commission grants a CPCN application, it cannot be granted by CD Staff. Second, we clarify that we do not intend for the ministerial review process to provide an applicant with an advantage over other applicants, and that Communications Division will ensure that all applications are reviewed holistically (*e.g.*, applications within a county). With this in mind, applications eligible for ministerial review may still be referred to the Commission for consideration such as when multiple entities have taken steps to provide service in the same county.

Various parties recommend the Communications Division include analysis of disadvantaged communities in the development of the priority areas. These parties also encourage the Commission to give priority to projects that propose to serve disadvantaged communities. The program rules are revised to require Communications Division to include demographic information, such as the number of low-income households, or disadvantaged community status, in developing priority areas. In addition, the scoring criteria are updated to consider disadvantaged communities as part of the “Existing broadband service need” criteria.

In response to comments filed by CCTA, we clarify that ISPs objecting to a FFA application must submit unredacted customer bills for CD Staff to review, and because customer bills contain personally identifiable information, this information will be kept confidential, in accordance with the Commission’s confidentiality rules. We also revise the rules to indicate that a carrier may request confidential treatment pursuant to requirements of GO 66-D as to the number of subscribers an ISP has in a proposed project area that is included in a FFA application objection. Appropriately redacted information must still be provided as part of the public objection process. In addition, we revise the

objection process to provide some flexibility for how objectors may document claims of proof of existing infrastructure.

In response to comments filed by Cal Advocates, we clarify in the Appendix that grant recipients must report the number of customers enrolled in low-income broadband plans (*i.e.*, income qualified plans). We define low-income broadband plans as income-qualified broadband plans offered to low-income customers. We also clarify that grantees must submit project progress reports on a quarterly basis to be consistent with the Final Rule.

In response to CCTA's opinion that "the geographic location of all households or locations (that an ISP objecting to a FFA application must provide)" is confidential information, as well as permits and pole attachment applications, we clarify and revise this decision and the rules in Appendix A to make clear that an ISP objecting to a FFA application must provide deployment data on the locations where it offers service in a given project area, and this information will be disclosed. Further, permits submitted as part of an application objection will be disclosed. This is consistent with statute, and Commission rules and practices, including those articulated in G.O. 66-D or D.20-12-021. We align our determination on the confidentiality of pole attachment applications with that in D.21-10-019. We revise this decision at pages 78-81, and add new conclusions of law 8-11, to reflect the information that the Commission may disclose and that which may submitted under a request for confidentiality under GO 66-D.

29. Assignment of Proceeding

Commission President Alice Reynolds is the assigned Commissioner and Thomas J. Glegola is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. On August 14, 2020, Governor Gavin Newsom issued Executive Order N-73-20, directing state agencies to accomplish 15 specific actions to help bridge the digital divide, including ordering state agencies to pursue a minimum broadband speed goal of 100 Mbps download to guide infrastructure investments and program implementation to benefit all Californians.

2. On September 10, 2020, this Commission opened this Rulemaking to set the strategic direction and changes necessary to expeditiously deploy reliable, fast, and affordable broadband Internet access services that connect all Californians.

3. On March 11, 2021, President Biden signed into law the American Rescue Plan Act of 2021 (Public Law No. 117-2), also called the COVID-19 Stimulus Package or American Rescue Plan, which established the Coronavirus State Fiscal Recovery Fund (SLFRF), which appropriated funds for states to deploy last-mile broadband Internet networks.

4. The Secretary of the U.S. Treasury Department (Treasury) issued an Interim Final Rule effective May 17, 2021, to implement SLFRF. Treasury also issued a SLFRF Frequently Asked Questions (FAQ) document to provide additional guidance on how funds should be utilized. Treasury issued its Final Rule on January 6, 2022, which was published in the Federal Register on January 27, 2022. The Final Rule is effective April 1, 2022.

5. On July 20, 2021, Governor Newsom signed SB 156 into law, creating the Federal Funding Account, with this Commission being responsible for implementing the new grant program.

6. SB 156 appropriates two billion dollars in SLFRF funds into the new Federal Funding Account (FFA).

7. SB 156 and the Final Rule permit the construction of a new state-owned and operated statewide middle-mile network.

8. The Second Amended Scoping Memorandum and Ruling in the instant proceeding, issued on August 2, 2021, adds implementation of the FFA to Phase III of this proceeding.

9. On September 23, 2021, the Assigned Commissioner issued a ruling requesting comment on a Staff Proposal for the rules that would implement the Federal Funding Account grant program (ACR).

10. The Final Rule grants this Commission broad discretion to determine what areas are eligible, how to define reliable service, and what information to require from entities objecting to an application, among other items.

11. The Final Rule identifies that legacy network technologies, such as copper telephone lines and early versions of cable system technology, may not provide reliable service because they typically lag on speeds, latency, and other factors, as compared to more modern technologies like fiber-optic networks.

12. The Final Rule requires grant recipients to build broadband infrastructure that reliably delivers or exceeds symmetrical upload and download speeds of 100 Mbps unless it is not practicable because of the geography, topography, or excessive costs associated with such a project. In these instances, the Final Rule require projects to deliver 100 Mbps download and at least 20 Mbps and be scalable to provide higher upload speeds.

13. The Final Rule encourages recipients to prioritize support for broadband networks owned, operated by, or affiliated with local governments, nonprofits, and cooperatives, finding that these networks have less pressure to generate profits and a commitment to serve entire communities.

14. The Final Rule requires grant recipients to participate in the Federal Communications Commission's Affordable Connectivity Program or offer an equivalent program, as well as offer a low-cost broadband plan.

15. All SLFRF funds must be awarded within the statutory period between March 3, 2021 and December 31, 2024 and expended to cover such obligations by December 31, 2026.

16. ISPs have two opportunities to demonstrate whether a specific geographic area is served, based on data submitted by ISPs to the Commission, which Communications Division Staff validates, and the application objection process adopted herein.

Conclusions of Law

1. The rules, application requirements and guidelines for the Federal Funding Account, as set forth in Appendix A, are consistent with federal statute, the Treasury Final Rule and state statute and should be approved.

2. Initially limiting funds to areas of the state that do not have access to reliable 25 Mbps download and 3 Mbps upload connection is reasonable, given the significant need for high-speed, reliable and affordable wireline broadband service in the state.

3. It is reasonable to allow lower build out requirements for grant recipients proposing projects in which delivering symmetrical speeds of 100 Mbps is impracticable because of the geography, topography, or excessive costs associated with such a project.

4. The Final Rule encourages program eligibility determinations as well as program funding to be limited to reliable wireline broadband infrastructure.

5. The Final Rule encourages recipients to prioritize investments in fiber optic infrastructure, finding that such advanced technology enables the next

generation of application solutions for all communities, can deliver superior, reliable performance, and is generally most scalable to meet future needs.

6. This decision complies with directives of Pub. Util. Code §§ 281(n)(3)(A) and §§ 281(n)(3)(B) respectively which direct the Commission to spend \$2 billion on broadband Internet infrastructure projects, with \$1 billion allocated to projects in urban counties and \$1 billion allocated to projects in rural counties, requiring the Commission to allocate initially \$5 million for projects in each county and then allocate the remaining funds in the respective urban or rural allocation, based on each county's proportionate share of households without access to broadband Internet access service speeds of at least 100 megabits per second download.

7. The application objection rules adopted in this decision, including the 21-day submission deadline and the information requirements of applicants and application objectors, balance the need to award grants expeditiously against the potential for committing funds to unnecessary projects and should be approved.

8. In D.20-12-021, the Commission analyzed, at great length, information that meets the definitions of trade secret and critical infrastructure information.

9. ISP deployment data, also called serviceable address data, as well as permits, do not contain customer proprietary network information (CPNI). ISP deployment data, also called serviceable address data, and permits are already in the public domain, and therefore do not meet the definitions of a trade secret or critical infrastructure information.

10. In D.21-10-019, the Commission found that carriers did not satisfy their burden of demonstrating that pole attachment data warranted confidential treatment, but still allowed any of the five major pole owners and/or attachers to

file a motion seeking confidential treatment and provide the necessary granular information and declaration to support their confidentiality request.

11. This Commission has the authority to delegate to Staff the ministerial review of Federal Funding Account applications meeting the criteria specified in the Ministerial Review Section of this Decision and in Appendix A, and it is reasonable that it do so in the context of this proceeding.

12. The new state owned and operated statewide middle-mile network authorized by SB 156 will not reach all parts of the state, making it necessary to use some Federal Funding Account grant funds on middle-mile infrastructure.

13. The Commission should adopt the Federal Funding Account rules, as revised in this decision.

O R D E R

IT IS ORDERED that:

1. The revised Federal Funding Account rules contained in Appendix A are adopted.

2. The Commission delegates to Communications Division Staff the authority to develop application submission guidance and templates for applicants and interested individuals that are consistent with this Decision and with the U.S. Treasury Department's Final Rule.

3. The Commission delegates to Communications Division Staff the authority to approve applications meeting the ministerial review requirements contained in Appendix A and consistent with this decision. Applications that do not meet the ministerial review requirements may only be approved by Commission resolution.

4. The Commission delegates to Communications Division Staff the authority to establish application deadlines for the Federal Funding Account approved by this decision.

5. Rulemaking 20-09-001 remains open.

This order is effective today.

Dated April 21, 2022, at San Francisco, California.

ALICE REYNOLDS
President
CLIFFORD RECHTSCHAFFEN
GENEVIEVE SHIROMA
DARCIE L. HOUCK
JOHN R.D. REYNOLDS
Commissioners

APPENDIX A

Revised Federal Funding Account Grant Program Rules

Appendix A:

Federal Funding Account Program Rules and Guidelines

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1. Background and Purpose

This document sets out rules, guidelines, and application materials for the newly established Federal Funding Account within the California Advanced Services Fund program.

The COVID-19 public health emergency has underscored the importance of universally available, high-speed, reliable, and affordable broadband as millions of Americans rely on the internet to participate in, among critical activities, remote school, healthcare, and work. Recognizing the need for such connectivity, the American Rescue Plan Act (ARPA) provides funds to State, territorial, local, and Tribal governments to, among other things, make necessary investments in broadband infrastructure.¹

On July 20, 2021, Governor Gavin Newsom signed Senate Bill (SB) 156 into law, creating the Federal Funding Account (FFA). SB 156 revises and recasts the California Advanced Services Fund (CASF) program (Cal. Pub. Util. Code § 281), among other things, to establish as the goal of the Broadband Infrastructure Grant Account, rather than the CASF fund, by not later than December 31, 2026, to approve funding for infrastructure projects that will provide broadband access to no less than 98% of California households and establishes the Federal Funding Account in the CASF program. The statute directs the Commission to use state or federal infrastructure moneys deposited into the Federal Funding Account to implement a program to expeditiously connect unserved and underserved communities by applicable federal deadlines.² SB 156 further provides that until June 30, 2023, the Commission must allocate one billion dollars (\$1,000,000,000) in urban counties and one billion dollars (\$1,000,000,000) in rural counties. The Commission must initially allocate five million dollars (\$5,000,000) in each county. The Commission must allocate the remaining moneys based on each county's proportionate share of the households without access to broadband internet access service with at least 100 megabits per second download speeds, as identified and validated by the Commission pursuant to the most recent broadband data collection, as of July 1, 2021.

¹ American Rescue Plan Act of 2021 (ARPA), sec. 9901, Public Law 117-2, codified at 42 U.S.C. 802 et seq. Section 9901 of ARPA amended Title VI of the Social Security Act 17 (the Act) to add section 602, which establishes the Coronavirus State Fiscal Recovery Fund, and section 603, which establishes the Coronavirus Local Fiscal Recovery Fund (together, the Fiscal Recovery Funds). The Fiscal Recovery Funds are intended to provide support to State, local, and Tribal governments in responding to the impact of COVID-19, including investment in broadband infrastructure.

² Cal. Pub. Util. Code § 281(n)(1).

SB 156 provides that projects funded by the Federal Funding Account shall be implemented consistent with Part 35 of Title 31 of the Code of Federal Regulations and any conditions or guidelines applicable to these one-time federal infrastructure moneys. On January 6, 2022, the United States Treasury Department (Treasury) issued the Final Rule to implement the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund (SLFRF) established under ARPA. This Final Rule sets out rules and regulations in Part 35 of Title 31 of the Code of Federal Regulations.³

The following proposed rules are based on SB 156, previous infrastructure program guidelines,⁴ and the federal ARPA SLFRF requirements and guidance.

2. Eligible Areas

The Final Rule requires investments in eligible “projects designed to provide service to households and businesses with an identified need for additional broadband infrastructure investment.”⁵

The Final Rule further explains that, “Households and businesses with an identified need for additional broadband infrastructure investment do not have to be the only ones in the service area served by an eligible broadband infrastructure project. Indeed, serving these households and businesses may require a holistic approach that provides service to a wider area, for example, in order to make ongoing service of certain households or businesses within the service area economical.”

2.1. Project Identification and Application Process

Communications Division Staff will publish priority areas, a subset of the eligible unserved areas, on the CPUC website. Staff will publish priority areas that are coordinated with the Commission’s obligation to assist in preparing definitive plans for deploying necessary infrastructure in each county, including potential coordination across contiguous counties. The priority areas will account for projects that may not fall strictly within county lines. In addition, Communications Division will publish demographic and digital equity information and analysis about the priority areas such as the number of low-

³ Department of the Treasury, Final Rule, Coronavirus State and Local Fiscal Recovery Funds, 31 C.F.R. Part 35, 87 FR 4338-4454 (January 27, 2022) (Final Rule), available at:

<https://www.federalregister.gov/documents/2022/01/27/2022-00292/coronavirus-state-and-local-fiscal-recovery-funds>.

⁴ Decision 21-03-006, Appendix A, Broadband Infrastructure Account Requirements, Guidelines and Application Materials, March, 2021, <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/communications-division/documents/casf-infrastructure-and-market-analysis/2021-casf-guidelines/d2103006-appendix-a-revised-casf-guidelines-w-header.pdf>.

⁵ 87 FR 4443.

income households within each priority area, median household income, disadvantaged community status, and other measures of broadband need and digital equity.

Communications Division staff will provide notice, at a minimum, on the proceeding service list and the CASF proceeding service list that the priority areas have been published. Communications Division may update the priority areas as other broadband data becomes available.

Potential applicants will have an opportunity to add to or subtract from a priority area consistent with the eligible area requirements.

3. Funding Criteria and Commission Evaluation of Applications

Consistent with federal guidelines, eligible projects must be designed to reliably offer, upon completion, speeds at or above 100 Mbps download and upload. In some cases, 100 Mbps symmetrical speeds may be impracticable and lower speeds of 100 Mbps download and 20 Mbps upload may be considered.⁶

The Commission will evaluate eligible project applications based on the following criteria:

- a. Match (up to 10 points). An application will receive credit based on the percentage of matching funds the applicant proposes to invest in its project and the variety of sources of matching funding provided by others. Applicants may include other funding sources such as other federal or state funds which are not duplicative.⁷
- b. Project technology choice (up to 10 points). Fiber optic infrastructure is scalable and enables the next generation of application solutions for all communities. An application proposing to invest in fiber optic infrastructure will receive credit.
- c. Type of Partnership (up to 20 points). Public and tribal entities have less profit-making pressure and are committed to providing service serving their communities. An application proposing to build a broadband network owned, operated by, or affiliated with local governments; non-profits; a California tribal government, or their wholly-owned tribal corporation, or tribal non-profit; and cooperatives will receive credit. If a Tribe and other entities apply for the same proposed funding area which includes Tribal land, then special consideration will be given to the Tribal applicant.
- d. Offers California LifeLine and/or federal Lifeline (up to 10 points). An application that will offer or commits to offering California LifeLine and/or

⁶ 87 FR 4443.

⁷ 87 FR 4422.

federal Lifeline service will receive credit.

- e. Pricing Commitments (up to 10 points). An application that commits to not increasing prices for a period of 10 years instead of the required 5 years.
- f. Offering low-cost broadband plan at 50/20 Mbps (up to 20 points). An application proposing to offer the low-cost broadband plan at 50/20 Mbps for \$40 a month. Recipients have the option to adjust plans in accordance with the Consumer Price Index.
- g. Existing broadband service need (up to 20 points). An application proposing to serve an entire priority area as identified by the Communications Division (see Section 2). Projects proposing to serve disadvantaged communities, as identified by the demographic information Communications Division provides and information submitted by the applicant, will be considered in scoring the existing broadband service need.
- h. Applicant capacity and performance (up to 10 points). An application that demonstrates the financial, technical, and operational capacity to execute the project successfully and completely in the timeframe will receive credit.
- i. Technology, Network, and Budget (up to 10 points). An application that demonstrates a well-planned project with a reasonable budget that shows it will deliver speeds and service proposed and be sufficiently robust to meet increasing demand for bandwidth will receive credit.
- j. Leveraging Statewide Middle Mile (up to 10 points). An application that proposes to leverage the statewide open-access middle mile network will receive credit, unless not in reasonable proximity to the network.

The Commission reserves the right to reject any application as filed, and determine the terms of a grant award, including the award amount, with the selected applicant prior to offering the grant. If negotiations cannot be concluded successfully with an applicant, as determined solely by the Commission, the Commission may withdraw its award offer. Since applications that receive lower scores reflect a reduced commitment to provide public benefits, staff may make recommendations to the Commission via resolution to reduce the percentage of public funding commensurate with the reduced public benefit.

4. Definitions

“Broadband Map” means the California Interactive Broadband Map (available at <http://www.broadbandmap.ca.gov/>) showing served status and eligibility, maintained by the Commission or successor map showing Federal Funding Account eligibility and/or

proposed project areas.

“Eligible Project” is capable of offering wireline broadband service at or above 100/100 Mbps, or 100/20 Mbps if symmetrical service is not practicable.

“Location” means an individual, serviceable location that is identified by street address (if one exists) and latitude/longitude coordinates, as well as potential subscriber type.

“Low-income customers” are households with incomes that would qualify for CARE pursuant to Pub. Util. Code §739.1(a) and D.16-11-022 at 18 (or as updated in a successor decision). As noted above, for a household of four the income threshold is \$52,400 through May 31, 2021. The threshold is updated regularly in the CARE proceeding, A.19-11-003, et. al.

“Low-cost broadband plans” are subscriptions available to all customers that are consistent with affordability requirements in the Decision and section 9.11 in this document. This definition may be updated from time to time consistent with inflation, analysis and findings from the Commission Affordability proceeding, and related federal and state activities. The benchmark price and requirement can be modified by a waiver process to account, for example, for inflation.

“Low-income broadband plans” are income-qualified broadband plans offered to low-income customers.

An “unserved” area means an area for which no wireline broadband provider reliably offers broadband service at speeds of at least 25 Mbps downstream and 3 Mbps upstream to the entire community.⁸

5. Eligible Entities

The following entities are eligible for a FFA grant:

- Entities with a Certificate of Public Convenience and Necessity (CPCN) that qualify as a “telephone corporation” as defined under Public Utilities (Pub. Util.) Code section 234; or
- Non-telephone corporations that are facilities-based broadband service providers; or
- Local governmental agencies; or

⁸ To determine if an area is unserved, the Commission will rely on data from a variety of services, including broadband deployment data, subscriber data, crowdsourced data, service quality data, and qualitative data.

- Electric utilities; or
- Non- profits
- Co-operatives
- California Tribes⁹

6. Middle Mile Funding

Consistent with the Final Rule, recipients may use payments from the Funds for middle-mile infrastructure, but recipients are encouraged to focus on projects that will achieve last-mile connections – whether by focusing on funding last-mile projects or by ensuring that funded middle-mile projects have potential or partnered last-mile networks that could or would leverage the middle-mile network.¹⁰

For projects that include funding for middle-mile infrastructure, Staff will evaluate and verify that the proposed middle-mile infrastructure is needed to achieve the last-mile connections. Additionally, the Commission will evaluate whether the proposed middle mile infrastructure can be provided by the statewide middle-mile network.

Staff will verify if existing middle-mile infrastructure in a proposed project area has sufficient capacity, is reasonably affordable, and is open-access prior to granting or making a recommendation to the Commission to grant a proposed project. Staff will post guidance regarding specifications for middle-mile funded through FFA on its website.

6.1. Open Access

Open access requires that FFA funded middle-mile infrastructure be made available to provide nondiscriminatory interconnection, internet access, and the provision of dark fiber, at reasonable and equal terms to any communications service provider that wishes to interconnect with that infrastructure, wherever technically feasible.¹¹ For projects awarded FFA funding to deploy middle-mile infrastructure, the middle-mile segment(s) shall be deemed open access for the duration of the lifetime of that infrastructure.

⁹ Eligible California Tribal entities include California tribal governments, their wholly-owned tribal corporations, and tribal non-profits.

¹⁰ 87 FR 4420.

¹¹ 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.

6.2. Interconnection

FFA grant recipients must provide open access at any technically feasible interconnection point in the network. Providers must make a good-faith effort to find a technically feasible solution where possible.

Interconnection includes, at a minimum, the physical interconnection of the FFA recipient's facilities to a requesting party's facilities for the exchange of traffic. Service offerings may include, but not be limited to, lease of dark fiber, local transmission services, transport, and dedicated Internet access services.

Examples of feasible location types include, at least:

- any previously defined interconnection points;
- new and existing network exchange locations;
- splice points; and
- where wireline infrastructure has been damaged and repairs have been made or are planned to be within 500 meters of an unserved community.

Consistent with the requirement to negotiate in good faith, the FFA grant recipient must provide information detailing the FFA-funded infrastructure to parties requesting interconnection such as route maps, interconnection points, splice points, and type of fiber.

FFA grant recipients must make all reasonable efforts to allow requesting parties to interconnect and procure transport service or wholesale a direct connection. In addition, FFA grant recipients must provide requesting parties with an ability to connect to the Internet irrespective of whether the FFA grant recipient connects to the Internet directly or indirectly.

6.3. Interconnection with Statewide Open-Access Middle Mile Network

Projects will interconnect with the statewide open-access middle mile network, where reasonable and feasible.

6.4. Interconnection and Pricing

Pricing, and terms and conditions for other providers to interconnect with FFA-funded middle mile shall be just, reasonable, and nondiscriminatory.

Grant recipients must offer tiered pricing and a range of options to fit different business models. The service levels must be at least equivalent for similarly situated entities such as Wholesale (ISP) / Government / Public Anchor Institution / etc. Pricing, tariffs, and the framework identifying standard terms and conditions must be provided to the Commission's Communications Division as

part of the FFA application for middle-mile funding and may be updated by the grantee from time to time. Terms and conditions should address essential elements of network operations such as cybersecurity, circuit provisioning, network outages, future capital investment costs, and operations and maintenance costs.

Grant 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.¹² Reasonable prices, terms, and conditions for last-mile provider access to middle-mile infrastructure may vary depending on local circumstances such as physical and network conditions, or the types of services and service levels requested by the last-mile provider.

6.5. Open Access Decision Enforcement

In the event that the FFA grant recipient fails to comply with the open access requirement for middle mile funded by the FFA in accordance with the terms of approval granted by the Commission, or in the event that the FFA grant recipient does not negotiate in good faith with a requesting party, the requesting party may file a complaint with the Commission.

6.6. Open Access Reporting

For the life of the middle-mile infrastructure, the FFA grant recipient must provide, in its confidential annual report to the Commission, a detailing of the number of interconnection requests and executed service agreements. The report must include: date of request, requesting party, location of requested interconnection, service requested, outcome of request, pricing, tariffs (if applicable), and terms and conditions.

7. Performance Criteria

At a minimum, all FFA projects must meet the performance criteria outlined below:

- a. **Project Completion:** All CEQA-exempt projects must be completed within 18 months, and all other projects shall be completed within 24 months after receiving authorization to construct.
- b. **Pricing:** All applicants shall commit to serve customers in the project area at prices not exceeding those provided in the application for 5 years after project completion. Should the need arise for grant recipients to adjust prices due to externalities outside their control (e.g. inflation), grant recipients may file and serve, on the R.20-09-001 proceeding service list, a request to modify this requirement with the Communications Division.

¹² See FCC 04-164 Report and Order, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers (FCC Docket No.: CC 01-338). <https://docs.fcc.gov/public/attachments/FCC-04-164A1.doc>

- c. Speeds: All households in the proposed project areas must be offered a broadband Internet service plan with speeds of at least 100 Mbps download and 100 Mbps upload, or speeds of at least 100 Mbps download and 20 Mbps upload if applicable.
- d. Latency: All projects shall provide service at no higher than 100 ms of latency.
- e. Data Caps: Data caps are strongly disfavored and may be an indication that the proposed infrastructure is insufficient. If including a data cap, an applicant must include a justification about how the cap does not limit reliability of the connection to the users. In any event, data caps shall provide a minimum of 1000 GBs per month.
- f. Affordability: All projects shall participate in the Affordable Connectivity Program (ACP) or otherwise provide access to a broad-based affordability program to low-income customers in the proposed service area of the broadband infrastructure that provides benefits to households commensurate with those provided under the ACP. Should the ACP program end, the Commission will identify a successor low-income subsidy program participants must participate in.

8. Reimbursable Expenses

The costs the Commission may reimburse are as follows:

- a. Costs directly related to the deployment of infrastructure;
- b. Costs to lease access to property or for Internet backhaul services for a period not to exceed five years; and
- c. Costs incurred by an existing facility-based broadband provider to upgrade its existing facilities to provide for interconnection.
- d. Costs incurred during the period beginning March 3, 2021 and ending December 31, 2024.¹³

Additionally, administrative expenses directly related to the project shall be capped at 2 percent of the grant amount and a maximum of 15 percent contingency on direct infrastructure costs.¹⁴

9. Information Required from Applicants

A single application must be submitted by each applicant for eligible project areas.

¹³ 31 C.F.R. 35.5(a), FAQ Question 4.7.

¹⁴ We define administrative costs as “indirect overhead costs attributable to a project, per generally accepted accounting principles (GAAP), and the direct cost of complying with Commission administrative and regulatory requirements related to the grant itself.” Applicants seeking additional funds will require a Commission exemption included in a draft resolution.

Non-contiguous project areas may be considered as a single project. Applicants proposing projects with middle-mile infrastructure must show that it is indispensable for accessing the last-mile infrastructure and must commit to open access requirements. All applications must include the items listed below:

9.1. Application Item 1 - Project Summary (Distributed Publicly)

The applicant must submit a Project Summary, which Communications Division Staff will post on the website. The applicant also must submit the Project Summary to the CASF Distribution [List](#). The summary must include the following information:

- Company/Applicant's name.
- CPCN/U-Number or pending CPCN application number, if applicable.¹⁵
- Contact person.
- Project title.
- Named project location (Community/County).
- Project type (Last-mile or Hybrid Last-mile/Middle-mile).
- Amount of FFA grant funding requested and project cost.
- Map of the proposed project area.
- The number of unserved households or locations the project will serve.
- The maximum Mbps downstream and upstream speed currently offered to households.
- Median Household Income of the project area.
- The number of businesses, anchor institutions and public safety locations in the project area that will receive new or improved service.
- A description of the major infrastructure to be deployed: miles of planned fiber, Central Offices used, number of remote terminals/fiber huts to be built, and if an Indefeasible Right of Use (IRU) is used.
- Estimated breakdown of aerial and underground installation.
- Major equipment expenses (e.g., nodes, hubs, switches, etc.). Estimated project plan with major milestones and construction timeline.
- Description of proposed broadband project plan for which FFA funding is being requested, including the type of technology to be provided in the proposed service areas:

¹⁵ A CPCN is not a requirement to apply for or be awarded an FFA grant. CPCN information is available at www.cpuc.ca.gov/General.aspx?id=1019.

- Download speed capabilities of proposed facilities.
- Upload speed capabilities of proposed facilities.
- The project description will provide enough construction detail to enable a preliminary indication of the need for a California Environmental Quality Act (CEQA) review and if proposed project areas contain any environmentally sensitive areas. For example, when trenching is required, the applicant will state and describe the manner in which the site is to be restored, post-trenching.
- Identification of the leveraging of existing available facilities.
- A statement of whether the applicant is revising the area for which it is requesting funding.
- A statement of whether the applicant is seeking Ministerial Review and, if so, information that the application meets all requirements for Ministerial Review.
- An explanation of why any Middle Mile facilities in the proposed project are necessary for accessing the proposed last-mile infrastructure.
- A statement accepting the open access requirements for any Middle Mile facilities in the proposed project.

9.2. Application Item 2 – Applicant Entity Information

The applicant must provide at least the following information, as necessary:

- Certificate of Good Standing issued by the Secretary of State;
- Organizational Chart, Company History, and Statement of Readiness to Build, Manage, and Operate Broadband;
- Key Contact Information (Name, Title, Address, Email Address, and Phone number);
- Key Company Officers.

9.3. Application Item 3 – Description of the Applicant’s Current Broadband Infrastructure and Existing Infrastructure in the Area

The applicant must provide:

- A description of the provider’s current broadband infrastructure and service within five miles of the proposed project;
- A description of other providers’ infrastructure within the project area which can be leased, purchased or accessed via interconnection.

9.4. Application Item 4 - Project Location Data

The applicant must provide the following:

- Any proposed revisions to the priority area. For example, if the applicant wants to revise the priority area's geographic location, the applicant must specify those changes. See section 9.6 below for further information.
- The geographic location of all households and housing units. This information will be provided in a plain-text, comma-separated values (CSV format) file, or kmz/kml file or shapefile, that contains geo-located street address information, including latitude and longitude coordinates.¹⁶ Additional information about how to format this item is available on the FFA website.
- The geographic location of the project related key network equipment, such as router facilities, remote terminals, network interconnection, etc. Additional information about how to format this item is available on the CASF webpage.
- The specific geographic boundary of the project area within which all project locations will fall (shapefile or .kml).

9.5. Application Item 5 - Median Income

The applicant must report the median household income for each Census Block Group (CBG) that intersects the project area. The California Broadband Map (<http://www.broadbandmap.ca.gov/>) includes census derived population and income data and information regarding existing service providers and their reported service speeds. Using the census block group layer data return, the median income and CBG code can be obtained. For reference, CBG codes are formatted as follows:

- CBG(s) must be based on the latest decennial census. CBG(s) must be in a twelve-digit format, as follows:¹⁷

<u>State</u>	<u>County</u>	<u>Tract</u>	<u>Block Group</u>
2 digits	3 digits	6 digits	1 digit

9.6. Application Item 6 - Project Eligibility

The applicant must rely on the project areas published by the Communications Division to identify project eligibility, as discussed in Section 2 of these Program Rules. The applicant must:

- Provide evidence, such as the following, if revising the priority areas:
 - The applicant may provide CalSPEED tests to show actual speeds or

¹⁶ There are a several possibilities for acquiring geolocated street address level data. This document from USAC provides an overview of geolocation methods: <https://www.usac.org/wp-content/uploads/high-cost/documents/Tools/HUBBGeolocationMethods.pdf>.

¹⁷ For example, a census block in the town of Fort Bidwell in Modoc County is 060490040001.

denials of service or other public feedback as evidence on unserved status. The Commission's public feedback tools are available on the Communications Division website:

<https://www.cpuc.ca.gov/industries-and-topics/internet-and-phone/broadband-mapping-program/broadband-public-feedback>.

- The applicant may provide other crowdsourced speed test data from other platforms, such as Ookla, provided a speed test for each location also include the plan subscribed to at that location.
- The applicant may present data contesting the reliability of service provided by existing providers (e.g., service quality information).
- The applicant may provide qualitative information (e.g., interviews and testimonial from the impacted community).
- Other available data, including but not limited to documentation of existing service performance, federal and/or state-collected broadband data, user speed test results, interviews with residents and business owners, data that addresses a variety of factors, including whether users actually receive service at or above the speed thresholds at all hours of the day, whether factors other than speed such as latency or jitter, or deterioration of the existing connections make the user experience unreliable, and whether the existing service is being delivered by legacy technologies, such as copper telephone lines (typically using Digital Subscriber Line technology) or early versions of cable system technology (DOCSIS 2.0 or earlier).

If served households or locations are included in a project, the application must include the rationale for why providing service to these households or locations is essential to the project.

9.7. Application Item 7 - Deployment Schedule

The applicant must provide a complete and reasonable project plan which demonstrates that project funds will be expended by the required deadline. The project plan includes at least:

- A schedule for obtaining necessary permits prior to construction. The schedule must include the timeline required for the California Environmental Quality Act (CEQA) review, as applicable.
- A schedule for project construction following receipt of permits, to complete the project within 24 months, or within 18 months if the project is categorically exempt from CEQA. The schedule needs to identify and describe construction milestones and include start and end dates for each milestone.

- If the applicant is unable to construct and complete the proposed project within the approved timeline, it must notify Staff as soon as it becomes aware and explain reasons for the delay and when the project will be completed.

9.8. Application Item 8 - Proposed Project Expenditures

The applicant must provide:

- Identification of expense categories; direct and or indirect expenses;
- Identification of direct expenses; equipment/materials, labor/construction wages and permitting/CEQA review;
- Identification of individual cost elements and their cost amount with associated costs for last-mile and middle-mile infrastructure separated. The applicant must identify all the equipment to be funded by the FFA by category, (buildings, poles, network and access equipment, operating equipment, customer premise equipment, materials), and the type of equipment (new building, prefabricated building, rehab of existing building, poles, modification of poles, broadband switching equipment, cable, etc.);
- Identification of allocated indirect costs; General and Administrative expenses, such as repair & maintenance expenses for equipment and facilities, utilities, rent of equipment and facilities, administrative costs, indirect materials and supplies, insurance on equipment & machinery, indirect labor and contract supervisory wages, production period interest expense;
- Administrative expenses, including executive salaries, are limited to 2 percent of the total grant amount. We define administrative costs as indirect overhead costs attributable to a project, per generally accepted accounting principles (GAAP), and the direct cost of complying with Commission administrative and regulatory requirements related to the grant itself.

9.9. Application Item 9 - Economic Life of All Assets to be Funded

The applicant must identify all the equipment to be funded by category (buildings, outside plant, poles, network and access equipment, operating equipment, customer premise equipment), the type of equipment (new building, prefabricated building, rehab of existing building, new poles, modification of existing poles, broadband switching equipment, office furniture and fixture, etc.), and the estimated useful life (10, 15, 20, etc. years).

9.10. Application Item 10 – Letter of Credit Requirement

An eligible applicant that is not a local government, Tribal government, or does not hold a CPCN issued by the Commission is required to submit a Letter of Credit. The Letter of Credit must be irrevocable and will permit the Commission to immediately reclaim any funds provided in the event of non-compliance with the Commission’s rules or requirements. The applicant must provide a letter of credit covering the full FFA grant amount issued to the applicant. The letter of credit must be valid throughout its entire 24-month project construction period.

Local and Tribal governments are exempt from the requirement to obtain a letter of credit, provided they can demonstrate administrative capability and expertise in financial administration; demonstrate relationships with financial advisors; in-house or contracted expertise in evaluating broadband infrastructure project feasibility; and demonstrate relationships with, and support from, experienced public or nonprofit broadband system operators. These types of applications must be approved by Commission resolution.

9.11. Application Item 11 – Pricing Commitment

An applicant must submit the monthly service subscription rates that it will offer to all consumers for a period of 5 years. To encourage adoption, installation charges must be waived during the commitment period. Recipients have the option to adjust plans in accordance with the Consumer Price Index. The applicant shall identify in its application:

- Monthly service level subscription rates that cannot be raised for 5 years.
- Waived installation/service connection charges.
- Specify any commitments and/or requirements that the customer must accept in order to receive equipment, such as return of equipment.
- Any broadband plan(s) for low-income customers detailing prices, data caps and speeds to be offered.
- Applicants must participate in the Federal Communications Commission’s Affordable Connectivity Program or offer an equivalent service plan for the life of the Affordable Connectivity Program. Should the ACP program end, the Commission will identify a successor low-income subsidy program participants must participate in.
- Applicants electing to provide a low-cost broadband plan for all customers for the life of the infrastructure. The low-cost plan must meet the following minimum standards:
 - Must not include data usage caps;
 - Must offer speeds that are sufficient for a household with multiple users to simultaneously telework and engage in remote learning, which is defined as

- 50/20 Mbps;
- Must be no more than \$40 per month, though recipients electing to provide these plans have the option to adjust plans in accordance with the Consumer Price Index;
- The grantee must not charge for installation or setup;
- The grantee must provide a free modem or router; and
- The service does not require a minimum term. Alternatively, an applicant may offer a plan that meets the above requirements except provide with higher speeds and/or at a lower cost per month.

Grant recipients also may submit a request to the Communications Division to waive or modify these requirements in the future, should the need to adjust these requirements arise. In addition, the Commission will update these requirements as needed.

Applicants requesting funding for middle-mile infrastructure must submit open access offerings including tiered pricing structures and the standard terms and conditions that will be available to entities requesting interconnection.

9.12. Application Item 12 – Marketing/Outreach Plan

The applicant must provide a plan that encourages subscription of the service in the project location. The submission shall explain the marketing and outreach plans the applicant will employ to attract residents to sign up for service during the pricing commitment period.

9.13. Application Item 13 – Government and Community Support

The applicant may submit endorsements or letters of support from state and local government, community groups, and anchor institutions supporting the deployment of the broadband infrastructure.

9.14. Application Item 14 – Funding Sources

The applicant must identify each applicable project funding source, such as: loans, bond offerings, financial contributions from the service provider, public or private broadband adoption or deployment program funds, and/or federal and state grants or loans.

Applicants proposing to combine FFA funds with funds from a separate broadband grant program must explain how FFA funds would address an identified need for additional broadband investment that is not met by existing federal or state funding commitments. Applicants must also itemize project costs, detail how funds will not be used for costs that will be reimbursed by the other federal or state funding streams and explain the public benefit that additional

funds will provide.

9.15. Application Item 15 - Financial Qualifications

The following must be submitted by applicant regarding the company:

- CPA Audited/ Attested Financial Statements for the last three years:
 - Balance Sheet
 - Income Statement
 - Statement of Cash Flows
- Pro Forma Financial Forecast for a five-year period, including a list of assumptions supporting the forecast. Projections must include:
 - Balance Sheet
 - Income Statement
 - Statement of Cash Flows
- Five-year annual EBIT (Earnings Before Income and Tax) projection for the company.

CPA Audited or Attested Financial Statements will be accepted from parent companies in lieu of financial statements from subsidiaries that have no audited or attested financial statements. If applicant has been in existence for less than three years, financial statements for as long as applicant has been in existence, e.g. one or two years, will be considered. For newly formed organizations, financial statements from the parent or sponsoring organization should be submitted, including the relationship between those organizations.

9.16. Application Item 16 - Project Viability

The applicant must provide a five-year projected project business plan showing project grant funding, profitability, revenues, and expenses. That plan must include an annual EBIT for the project. The project viability forecast must include projected revenue from customers, showing changes in subscriptions and service rates and charges through the pricing commitment period and the period thereafter, years three through five, as applicable.

9.17. Application Item 17 - Providing Voice Service

The applicant must provide information about the following:

- Availability of voice service that meets California and FCC requirements for 9-1-1 service.
- Deployment plans for applicable Federal and state requirements for battery back-up;

9.18. Application Item 18 – CEQA Attestation

The applicant must provide information about their project demonstrating how CEQA compliance is to be obtained. The applicant shall attest that they have contacted the Commission’s Energy Division CEQA section in advance of the filing and have consulted with CEQA Staff regarding the process of developing and filing a Proponent’s Environmental Assessment (PEA) or other CEQA documents and are aware of their responsibilities if their proposed project is not exempt from CEQA. Information on PEA and CEQA requirements is available on the Commission’s website at: www.cpuc.ca.gov/ceqa.

9.19. Application Item 20 – Affidavit

Applicants 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.

10. Submission and Timelines

Staff will announce application submission information and other deadlines. Applications should be due every six months and staff will target to review them in no more than 6 months. An organization will have 14 days, inclusive of weekends and holidays to object to an application. Application Summaries and Maps will be posted to the CPUC website and notification sent to the CASF Distribution List. In the event any date falls on a weekend or holiday, the deadline is the next business day.

11. Posting of Applications

The Commission will post a list of all pending applications, deadlines, and notices on the CPUC website

12. Objections

The Commission will provide a period during which interested persons may review the grant applications that have been submitted and file written comments objecting to an application under review. The Commission will consider these comments in reviewing the application. Any party that objects to a proposed area as already served must provide definitive evidence that the area is in fact already served.

An objection must identify and discuss an error of fact, or policy or statutory requirement that the application has contravened. Comments must be submitted no later than 14 calendar days, or a different date set by Staff, from when the notice of the application is served on the CASF Distribution List. Comments filed after

the deadline will be deemed denied. Comments must be filed with the Commission and served on the CASF Distribution List.

The Final Rule states, “recipients must ensure that SLFRF funds are designed to address an identified need for additional broadband investment that is not met by existing federal or state funding commitments.” An objection asserting an existing agreement exists to build a wireline service to address the need should provide evidence of the existing agreement, and plans indicating the construction route, beginning and ending construction dates, service area boundaries, and other pertinent construction details. Consistent with the Final Rule, a project is not disqualified by proposing to provide service to served households or locations. An objection asserting existing wireline communications infrastructure meets or exceeds the 25/3 Mbps unserved definition may still be provided. These objections must include the following to be considered:

- An attestation that all information provided is true and accurate in accordance with the Rule 1 of the Commission’s Rules of Practice and Procedure.
- An attestation that the households or locations identified are offered service and have the capability to reliably receive minimum speeds of 25 Mbps download and 3 Mbps upload.
- An attestation as to whether or not the households or locations identified are offered service and have the capability to reliably receive speeds of at least 100 Mbps download and 100 Mbps upload or, or at least 100 Mbps download and 20 Mbps upload and information on why provision of 100 Mbps upload is not practicable.
- The geographic location of all households or locations it serves in the area(s) for which the objection is filed. This information must be provided in a plain- text, comma- separated values (CSV) file, that contains geo-located street address information, including latitude and longitude coordinates.
- The number of subscribers and the level of service subscribed to in the area being disputed, including billing statement information to verify subscribership. This information shall be submitted unredacted to the Commission under seal; and
- At least two of the following: (1) permits, (2) easements, or (3) pole attachment applications submit and approved when infrastructure was built, and (4) pictures of provider infrastructure in the area (i.e., wires, huts, vaults, etc.). For example, street-view pictures of poles on which the attached communications infrastructure can be identified.

Comments that do not meet these requirements will be deemed denied.

An applicant may respond to any objection filed by an interested party within 14 days. A response to an objection must provide a public notice on the CASF Distribution List.

Communications Division Staff will review this information, along with the applicant's documentation, as it develops its recommendations to the Commission for the disposition of each application.

13. Ministerial Review

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

1. Applicant meets the program eligibility requirements.
2. The application has not received a valid objection or objections, or Staff has determined that the project area is not served.
3. The total grant does not exceed \$25,000,000.
4. The project must be California Environmental Quality Act (CEQA)-exempt, or approval letter must state that authorization to construct and release funds will be provided in a forthcoming resolution.
5. There must be no competing applications for the same project area in the same application period.
6. Costs per household are low, proposed project costs \$9,300 per household or less.
7. Does not propose to leverage funding from other state or federal programs or propose a project area that overlaps with areas with existing commitments to provide broadband service that is reliable and offer speeds of 100/20 Mbps.
8. Does not propose a project areas that include areas that have been identified by the Communications Division as having an existing provider that offers 25/3 Mbps wireline service.
9. Does not request a waiver of any program requirements.

Applications not meeting these criteria may only be approved by the Commission via resolution.

Ministerial Process	Resolution Process
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Maximum Cost per location of \$9,300	Does not meet all criteria under Ministerial Process
Maximum Grant Amount: \$25,000,000	
Must be CEQA-exempt, or approval letter must state that authorization to construct and release funds will be provided in a forthcoming resolution.	

Ministerial review shall not provide an applicant with an advantage over other applicants, and Communications Division shall ensure that all applications are reviewed holistically (e.g., applications within a county).

14. Reporting Requirements

Staff will provide guidance and a template for reporting which is consistent with the Treasury Final Rule.¹⁸ Grantees are required to file progress reports on at least a quarterly basis. These reports will be publicly posted by the Commission. Progress reports shall contain the following:

- Description of project accomplishments during this period.
- Identification of project milestones and the percent complete to date. If the percent completed is different from the estimated target milestones from the FFA application, it is necessary to provide a narrative description explaining what occurred.
- Major construction milestones (including a reporting on all CEQA mitigation implementation and monitoring activities, if CEQA review was required), date of completion of each task/milestone as well as problems/issues encountered, and actions taken to resolve these issues/problems during construction (including CEQA compliance, if applicable).
- Description of any challenges or issues and any risks faced during this past quarter in achieving planned progress on the project, including environmental compliance and permitting challenges if applicable.
- Description of significant project milestones or accomplishments planned

¹⁸ Treasury, Compliance and Reporting Guidance State and Local Fiscal Recovery Funds (November 15, 2021 Version 2.1), available at <https://home.treasury.gov/system/files/136/SLFRF-Compliance-and-Reporting-Guidance.pdf>.

for the following reporting period

- Subscribership information to date.
- Certification that each progress report is true and correct, under penalty of perjury.

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

- 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.
- Number of paying subscribers enrolled in the service provided by the funded construction, number of low-income customers enrolled in ACP, number of customers enrolled in any low-income plans, and the number of low-cost broadband plan customers enrolled.
- 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 at the address level for the project area, including:
 - Test results for download and upload speeds;
 - A representative sample of speed test results at dispersed locations in the project area, including locations at the edge of the project area; number of tests will vary based on project;
 - Maps and associated data of speed test locations and results in a .kmz/ .kml file, shapefile, or .csv spreadsheet.
 - A screenshot of results of CalSPEED speed tests, which can be accessed at <http://www.calspeed.org/index.html>.¹⁹
 - An attestation that all locations within the project area are offered service at minimum speeds of 100 Mbps download and 100 Mbps upload or higher or 100 Mbps download and 20 Mbps if applicable.
- Maps and associated data of all locations served
 - The geographic coordinates of all locations that are served. This information will be provided in a plain-text, comma-separated

¹⁹ The technically available speed at the location shall be tested, not a customer's subscribed speed.

values (.csv) file, or .kmz/ .kml file or shapefile that contains geo-located street address information, including latitude and longitude, as well as census block code (GEOID);

- Projected subscribers versus actual subscribers (by subscriber type), as of the date of the completion report;
 - The actual number of current subscribers by subscriber type and subscriber speed;
 - The potential number of subscribers of each type that could be served using the FFA project's existing facilities at the same minimum defined speed;
 - Both the number of low-income customers in the project area and the number of low-income customers subscribing to low-income plans;
 - Identification of the number of served locations in the project area that have broadband availability at or above the aforementioned minimum speeds.
- Documentation of advertisements, billing inserts and marketing information, by speed tier and prices.
 - Open access interconnections (if applicable).
 - The number of interconnection requests and executed service agreements.

Further, grant recipients are required to report speed, pricing, and any data allowance information, consistent with the Final Rule. Recipients must report annually to the Communications Division the speed, pricing, subscription data (including number of customers enrolled in ACP, low-cost, and low-income broadband plans), and any data allowance information on all offered plans. The report must also include a weblink with information on the recipient's income-qualified and affordable plans. The associated webpage should provide all plan information, ways to subscribe, and any necessary forms.

15. Payment

Staff will provide instructions and a template for payments that is consistent with the Treasury's Final Rule and the Decision adopting these Program Guidelines.

Requests for payments may be submitted as the project is progressively deployed. The prerequisite for first payment is the submittal of a progress report to the Commission showing that at least 10 percent of the project has been completed. Subsequent payments are made at the following deadlines: 35 percent completion,

60 percent completion, 85 percent completion and 100 percent completion. The final 15 percent payment request (from 85 to 100 percent) will not be paid without an approved completion report. Payments are based on submitted receipts, invoices and other supporting documentation showing expenditures incurred for the project in accordance with the approved FFA funding budget included in the FFA grantee's application.

In the event that the recipient fails to notify the Communications Division of any delays in the project completion and the project fails to meet the approved completion date, the Commission may impose penalties to be adopted in a Commission resolution. This may include rescinding the grant. Invoices submitted will be subject to a financial audit by the Commission at any time within 3 years of completion of project. If portions of reimbursements are found to be out of compliance, Grantees will be responsible for refunding any disallowed amounts along with appropriate interest at rates determined in accordance with applicable Commission decisions.

All funds must be obligated within the statutory period between March 3, 2021 and December 31, 2024, and expended to cover such obligations by December 31, 2026.²⁰

Projects that are not progressing must be quickly dissolved to free up funds and eligible areas for alternate applicants. As such, projects must demonstrate progress toward meeting grant objectives on the 182- or 24-month timeline, as applicable. On an annual basis, Communications Division Staff will place a resolution before the Commission with recommendations from Staff as to whether the applications that have not demonstrated substantial progress should be modified, revised, or rescinded.

16. CEQA Payment

CEQA consultant costs shall be paid directly by the Commission to the contractor. Following award of a grant the Energy Division CEQA Section Staff will obtain a contractor to review the CEQA documents for the project. The FFA will pay directly the project's CEQA PEA preparation costs, but those costs will be identified as costs associated with the grant and will have no effect on the applicable shares of grantee assigned and program supported total project costs.

The applicant may file with the Energy Division's CEQA Section a completed CEQA review conducted by another agency acting as the Lead Agency pursuant

²⁰ See, FAQ Question 6.11.
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to CEQA. Should this occur, grantees may request funds to pay for preparation of a PEA.

17. Execution and Performance

Staff and the grant recipient shall determine a project start date after the grant recipient has obtained all approvals, commonly 30 days after approval of the resolution or ministerial review approval. Grant recipients shall consult with California Tribes consistent with CPUC policy, at the planning stage and throughout the life of the project. Should the recipient or Contractor fail to commence work at the agreed upon time, is not following the project plan in a reasonable manner, the Commission, upon ten days written notice to the FFA recipient, reserves the right to terminate the award.

In the event that the FFA recipient fails to complete the project, in accordance with the terms of approval granted by the Commission, the FFA recipient must reimburse some or all of the FFA funds that it has received. The FFA grant recipient must complete all performance under the award on or before the termination date of the award.

Failure of an applicant to comply with the Commission's Order or grant agreement, as amended, or required by the U.S. Treasury Department may result in cancellation of the award. The Commission or the Recipient may terminate a grant award, at any time at its sole discretion by delivering ten (10) days written notice to the applicant/grant award recipient. In the event that the applicant terminates the grant award, for any reason whatsoever, it will refund to the Commission within 30 days of said termination, all payments made hereunder by the Commission to the applicant for work not completed or not accepted by the Commission. Such termination will require written notice to that effect that is delivered by the applicant to the Commission not less than ten (10) days prior to said termination. Communications Division Staff will notify the applicant of intent to prepare for Commission approval, a draft resolution that would rescind a FFA grant due to nonperformance.

Grant recipients shall provide for compliance with the American Rescue Plan Act and all other applicable federal statutes, regulations, and executive orders.²¹

18. Construction Phase

²¹ See, Department of the Treasury, Final Rule, Coronavirus State and Local Fiscal Recovery Funds, 31 C.F.R. Part 35, 87 FR 4338-4454 (January 27, 2022) (Final Rule), available at: <https://www.federalregister.gov/documents/2022/01/27/2022-00292/coronavirus-state-and-local-fiscal-recovery-funds>.

A grantee must notify the Commission within five days of determining that the grantee is planning to sell or transfer its assets. The grantee shall notify the Director of the Commission's Communications Division in writing of its intent to sell or transfer company assets within five days of becoming aware of these plans. The grantee shall also provide documentation, including an affidavit, stating that the new entity will take full responsibility and ownership to comply with the requirements of the FFA award and required by the U.S. Treasury Department. The new entity shall agree in writing to such. The grantee shall provide the Commission with any necessary documents requested in its review of the transfer. This will include all documents that are generally required of all entities applying for the FFA grants. The grantee shall not transfer FFA funds or the built portion of the project to the new entity prior to Commission approval via a resolution/order. If the Commission does not provide approval, it will rescind the grant.

Pursuant to P.U. Code 281(l), grantees must report monthly to the commission all of the following information throughout the construction phase:

- (A) The name and contractor's license number of each licensed contractor and subcontractor undertaking a contract or subcontract in excess of twenty-five thousand dollars (\$25,000) to perform work on a project funded or financed pursuant to this section.
- (B) The location where a contractor or subcontractor described in subparagraph (A) will be performing that work.
- (C) The anticipated dates when that work will be performed.

The Commission will, on a monthly basis, post the information reported pursuant to this subdivision on the commission's FFA internet website.

19. Post-Construction Phase

For three years after project completion, a grantee must notify the Commission within five days of determining that the grantee is planning to sell or transfer its assets. The grantee shall notify the Director of the Commission's Communications Division in writing of their intent to sell or transfer company assets within five days of becoming aware of these plans. The grantee shall also provide documentation, including an affidavit, stating that the new entity will take full responsibility and ownership to comply with the requirements of the FFA grant and requirements of the U.S. Treasury Department. The new entity shall agree in writing to such.

Additionally, grant recipients must file a Tier 2 Advice Letter with the following information:

- Purchase price;
- Copy of the agreement;
- Binding agreement from the purchaser or lessee to fulfill the terms and conditions relating to the project after such sale or lease; and,
- An explanation as to how the transaction would be in the best interests of those served by the project.

20. Audit Compliance Changes

All applicants are required to sign a consent form agreeing to the terms and conditions of the Federal Funding Account. These will be stated either in the Resolution approving the project, or in a letter sent by Staff to the successful applicant. The agreement will provide the name of the applicant, names of officers and members, and must be signed by the applicant. All recipients of federally funded grants exceeding \$750,000 will need to include a budget for a federal audit.²²

21. Penalties

Non-telephone corporation grantees must agree to the following language in the affidavit found in Attachment A to this document.

²² Treasury, Compliance and Reporting Guidance State and Local Fiscal Recovery Funds (November 15, 2021 Version 2.1), available at <https://home.treasury.gov/system/files/136/SLFRF-Compliance-and-Reporting-Guidance.pdf>.

ATTACHMENT A
Guidance to Staff on Information to Require for Telephone Corporations
NOTARIZED AFFIDAVIT

Name of Carrier/Company _____
Utility Identification Number _____ or _____ check here if Application for
CPCN is pending and the CPUC assigned application no., if available.
My name is _____. I am _____ (Title) of
_____ (Company). 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, 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 _____ [Name of Carrier/Company]
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 and 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.

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.

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: _____

Guidance to Staff on Information to Require
on-Telephone Corporations
NOTARIZED AFFIDAVIT

Name of Carrier/Company _____
Utility Identification Number _____ or _____ check here if Application for
CPCN is pending and the CPUC assigned application no., if available.
My name is _____. I am _____ (Title) of
_____ (Company). 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, 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 _____ [Name of Carrier/Company]
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 and 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.

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 program 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.

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: _____

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

*Order Instituting Rulemaking Regarding
Revisions to the California Advanced
Services Fund*

Rulemaking 20-08-021
(Filed August 27, 2020)

**OPENING COMMENTS OF THE RURAL COUNTY REPRESENTATIVES
OF CALIFORNIA ON PHASE 2A ISSUES REGARDING BROADBAND
LOAN LOSS RESERVE FUND**

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Dated: April 1, 2022

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

*Order Instituting Rulemaking Regarding
Revisions to the California Advanced
Services Fund*

Rulemaking 20-08-021
(Filed August 27, 2020)

**OPENING COMMENTS OF THE RURAL COUNTY REPRESENTATIVES
OF CALIFORNIA ON PHASE 2A ISSUES REGARDING BROADBAND
LOAN LOSS RESERVE FUND**

I. Introduction

In accordance with Rule 6.2 of the California Public Utilities Commission (“Commission”) Rules of Practice and Procedure (“Rules”), the Rural County Representatives of California (RCRC) submits comments to the Order Instituting Rulemaking 20-08-021 (“Rulemaking”) per the Assigned Commissioner’s Second Amending Scoping Memo and Ruling dated March 1, 2022. RCRC is an association of thirty-nine¹ rural California counties and its Board of Directors is comprised of elected supervisors from those member counties. RCRC was granted party status on September 15, 2020.

II. Comments

Our comments are outlined based on the questions posed by the Assigned Commissioner’s ruling.

¹ Recently, the RCRC Board of Directors welcomed Santa Barbara and Solano counties to its membership.

Structure of Loan Loss Reserve and Other Credit Enhancement Mechanisms

Question 1: What types of debt issuance, if any, should the Commission consider supporting by creating a loan loss reserve for potential losses?

The intent of the Broadband Loan Loss Reserve Fund (BLLRF) program is to fund the “deployment of broadband infrastructure”², anticipating that the BLLRF monies will support investments that will eventually generate revenue. Therefore, the Commission should prioritize the type of debt issuance that has a sufficient source to repay the BLLRF award, such as revenue bonds.³

Are there differences between local agencies and nonprofits that warrant consideration of support of various forms of debt issuance?

Public Utilities Code section 281.2 authorizes the Commission to make BLLRF program funding available to local government agencies and nonprofit organizations. And, although nonprofit organizations may provide broadband services (within the specified regulatory structure), they will generally require the participation of a public entity as the conduit issuer for any BLLRF supported tax-exempt debt. Senate Bill 156 (Chapter 112, Statutes of 2021) specifically provided that a Joint Powers entity, commonly known as a Joint Powers Authority (JPA), may issue revenue bonds for the deployment of broadband infrastructure by a nonprofit organization that are supported in whole or in part by the BLLRF, but does not authorize a nonprofit to directly issue such bonds⁴. By contrast, local governments have the long-standing authority to issue tax-exempt bonds⁵. Additionally, local governments provide greater financial security as they are established entities that are directly accountable to the communities and residents they serve. Therefore, most debt issuance utilizing BLLRF funding will be by local governments or through partnerships with local governments. Commission rules and requirements should reflect the demonstrated competency, dependability and financial resiliency of local governments that are responsible for providing reliable infrastructure and services to nearly 40 million Californians.

² Public Utilities Code section 281.2(a)

³ An example of an effective and efficient revenue bond structure supported by BLLRF is further detailed in the whitepaper attached as Exhibit “A.”

⁴ Government Code section 6547.7

⁵ See, e.g., Government Code sections 6540 et seq. and 6584 et seq.

What other factors should the Commission consider when making this determination?

Statutory changes made in SB 156 not only created the BLLRF program, aimed at local government financing of broadband infrastructure, but also established the Local Agency Technical Assistance (LATA) grant program specifically to assist local governments in preparing for broadband deployment and applying for infrastructure funding. Further, changes made to the California Advanced Services Fund (CASF) program through this legislation removed barriers to local government eligibility for funding through the CASF Broadband Infrastructure Account. With the enactment of SB 156 and associated legislation⁶, the legislature and governor created clear policy that fiber-based, open-access municipal broadband is a preferable alternative to the for-profit broadband infrastructure projects the state has historically subsidized. Additionally, the Commission has emphasized local jurisdiction coordination and a preference for local government involvement in broadband deployment in their respective jurisdictions. In the Commission's Federal Funding Account (FFA) Proposed Decision it provides preference for partnerships that include local governments⁷ and encourages partnership between various organizations⁸. Further the LATA program rules require that overlapping local jurisdictions seeking funding submit letters describing the coordination that occurred between the jurisdictions to prevent duplication of effort⁹. The BLLRF will provide a loan loss reserve account for a program of work over an extended period of time, inherently creating an increased risk for duplication of effort if coordination and transparency are not integral to the process. Therefore, the Commission should require non-local agency applicants for BLLRF funding to submit a letter of support from the relevant political subdivision to ensure, not only the efficient use of funding, but also coordination with the local land use authority and community needs.

Question 2: What proportion of project costs or types of projects costs, if any, should be supported by financing backed by loan loss reserve funds?

Commission BLLRF guidelines should be consistent with the authorizing statute, which states that the program is to fund "costs related to the financing of the deployment of broadband

⁶ SB 4 (Chapter 671, Statutes of 2021) and AB 14 (Chapter 658, Statutes of 2021)

⁷ R. 20-09-001, Proposed Decision, March 2, 2022, Page A-6

⁸ R. 20-09-001, Proposed Decision, March 2, 2022, Page 46

⁹ D. 22-02-026, Attachment 1

infrastructure ...including, but not limited to, payment of costs of debt issuance, obtaining credit enhancement, and establishment and funding of reserves for the payment of principal and interest on the debt.”¹⁰ The BLLRF award must be sufficient to support the full principal amount of the bonds issued to finance the underlying infrastructure, including any necessary capitalized interest and reasonable debt service reserve, and should also be available, if determined necessary by the BLLRF recipient, to support the interest on the bonds.

BLLRF recipients should be provided with flexibility regarding whether, for each bond issue, the BLLRF funds are pledged to secure payment of principal only, or both principal and interest – as each has advantages and disadvantages that may weigh differently for each financing. A pledge to cover both principal and interest maximizes investor confidence (and potentially reduces interest rates); however, this effectively decreases the amount that may be borrowed. By contrast, securing only the principal may be somewhat less attractive to investors, but allow for significantly expanded borrowing. These competing considerations may yield different results for individual projects, and therefore the BLLRF recipient should be given flexibility to make that determination based on the circumstances of each separate financing.

All project related costs should be eligible for financing through the BLLRF as this provides the financial markets with the assurance necessary to attract investment in unserved/underserved areas at reasonable interest rates.

Question 3: A potential goal of loan loss reserve funds is that the funding dedicated to loan loss protection is not needed to pay off principal or interest – that projects supported by the loan loss protection become self-sustainable and applicants do not default on the base financing instrument. Are there ways the Commission can structure loan loss protection to take advantage of this aspect of loan loss reserve funds?

The objective in utilizing a loan loss reserve (LLR) mechanism, as established through the BLLRF, is to provide needed security for financial institutions to invest in bonds intended to fund broadband infrastructure. However, ultimately, the program contemplates the utilization of revenue generated by the end consumer to cover the total construction expense and financing costs associated with the bond issuance. Therefore, it is imperative that BLLRF rules provide a structure

¹⁰ 281.2(a)(1)

that ensures that selected applicants and proposed deployments will result in revenue positive projects. One way to lessen the cost/revenue gap is to allow projects to fully leverage other available state and federal funding programs. This will remove barriers to deploying fiber infrastructure in generally high-cost construction areas that are typically the most underserved and low-income areas of the state. Many of these rural areas present unique challenges to the deployment of broadband infrastructure, including difficult terrain and geographic complications. These factors can make projects cost prohibitive and eventually infeasible, especially when installing fiber to the home. Without further subsidies, in addition to the BLLRF bond issuance, these areas will likely never have access to reliable high-speed internet connectivity. It is crucial that applicants be allowed to utilize all funding available during this time of historic federal investment in infrastructure.

Because it is contemplated that BLLRF funds will not be expended, this further provides the Commission with an opportunity to continue to leverage the same award of funds, for additional infrastructure projects, without additional Commission disbursement.¹¹ This would require a shift in how the Commission has traditionally structured broadband infrastructure funding application requirements – away from a project-oriented program structure to a “program of work” structure. To leverage the ability to reuse the unexpended award funds, priority should be given to applicants that identify a long-term program of work, including the ability to roll-over the allocated BLLRF moneys to support multiple bond issues over a period of years. Revenue bond covenants often provide for partial release of any pledged security, such as an LLR, once certain financial or operational milestones are achieved – e.g., when actual system revenues reach a specified level sufficient to assure payment of debt service. Such partial release allows that security to be pledged to support another bond issue – effectively leveraging the same BLLRF funds to attract multiple rounds of private investment.¹² Allowing BLLRF funds to be re-used in this manner will maximize the amount of private investment obtained for broadband deployment, and thus the amount of infrastructure actually deployed through the BLLRF. Allowing re-use of the BLLRF to support multiple bond issues will also help build investor confidence and attract

¹¹ This approach is further detailed in Exhibit “A.”

¹² Such “partially” released security typically remains pledged to secure the initial bonds; however, it may be also pledged to additional bond issues, thereby diluting the initial bondholder’s security once the milestones are met. (The security is then effectively shared between the original or subsequent bond issues, either *pro rata*, or with subsequent issues having seniority, depending upon the financing structure.)

investment. The primary source of repayment for broadband revenue bonds are system revenues, and the ability to expand the system may spread lenders' risk over a larger pool of ratepayers, thus offering advantages in both the initial and subsequent financings.

Question 4: Aside from loan loss protection, what other mechanisms of credit enhancement, if any, should the Commission consider adopting pursuant to the authorization set forth in Pub. Util. Code Section 281.2 (a)(1)?

BLLRF rules should provide enough flexibility in considering possible credit enhancement mechanisms to allow the program and applicants to take advantage of new market trends or pivot to address changing financial requirements.

Applicant and Project Eligibility Requirements

Question 5: Under the authorizing legislation, the Commission “may require a local government agency or nonprofit organization to provide information demonstrating the agency’s or nonprofit organization’s ability to reasonably finance and implement the infrastructure project deployed” using financing supported by the BLLRF. What eligibility requirements, if any, should the Commission establish for local government agencies or nonprofit organizations to demonstrate this ability?

Under Public Utilities code section 281.2(c), the Commission may require applicants to provide information demonstrating the agency or nonprofit organization's ability to reasonably finance and implement broadband infrastructure deployed with BLLRF support. Broadband revenue bonds supported with public funds are complex financial instruments requiring considerable sophistication and expertise to successfully implement, and long-term operation of the resultant broadband infrastructure is no less complex. It is consequently critical that applicants demonstrate their ability to effectively utilize any allocated BLLRF funds. Such demonstration should include all of the following components: The applicant's administrative capability, including a management team with expertise in bond financing and financial administration; demonstrated relationships with, and support from, financial industry participants necessary for successful bond issuance (e.g., underwriters, financial advisors, bond counsel, etc.); in-house or contracted expertise in evaluating broadband infrastructure project feasibility; and demonstrated relationships with, and support from, experienced public or nonprofit open-access broadband system operators.

Are there other requirements the Commission can or should adopt to ensure organizational ability and commitment to complete projects, (e.g., dedication of a certain amount of start-up project funding by the applicant)?

As discussed previously in these comments, local governments are uniquely situated to utilize the BLLRF program and have long used their bonding authority to finance infrastructure projects in their respective communities. Requiring a dedicated amount of project start-up funding for local government applicants is akin to having a funding match requirement – a prerequisite long understood to disadvantage small local governments and nonprofits. The Commission should instead prioritize applicants that demonstrate project readiness and commitment by pre-application investments such as a feasibility study.

Question 6: What project-specific information should the Commission require from applicants seeking loan loss reserve protection?

While eligible local government agencies and nonprofit organizations may be able to describe the initial broadband deployment project(s) to be supported by BLLRF with specificity at the time of application, it will often be impracticable to identify the individual projects to be included in subsequent bond issues supported by “re-used” BLLRF.¹³ Therefore, applicants should be required to lay out a program of work detailing the quantitative and qualitative criteria by which projects will be selected for inclusion in the initial and subsequent BLLRF-supported bond issues. These criteria may include any or all of the following:

- Percentage of unserved/underserved households in the project area.
- Median household income in the area, including consideration of affordability.
- Number of business and anchor institutions in the area.
- Access to existing or proposed middle mile infrastructure.
- Projected broadband infrastructure cost.
- Projected take rates and system revenues.
- Availability of other federal, state, and local subsidies.

¹³ It will often take several years to meet the typical milestones for releasing pledged LLR security. Changing conditions during that time period could significantly alter key program criteria in targeted regions, such as service levels, housing density, and access to middle mile infrastructure, removing some potential project areas from proper consideration and adding others.

- Demonstrated support in the local community.
- Environmental or other physical constraints.

The program of work must also include criteria and commitments for all infrastructure to be deployed with BLLRF support, including any or all of the following:

- Minimum and maximum download speed, upload speed, and latency.
- Type(s) of technology deployed.
- Whether construction will use directional drilling, trenching, aerial lines, or some combination.
- Anticipated minimum and maximum service subscription rates for customers (which may be adjusted for inflation and/or Consumer Price Index changes for Internet/broadband services)

By establishing a clear, detailed set of criteria governing both initial use and re-use of the allocated BLLRF moneys for subsequent bond issues, the Commission will be able to hold the applicant accountable for achieving the goals of the BLLRF, while permitting the applicant to maximize those goals through multiple rounds of private investment. Specifically, with this approach, the first tranche of BLLRF funding application must be considered differently than the subsequent reuse of money. RCRC proposes that with the initial application for BLLRF funding, the above outlined criteria for project selection and deployment requirements be utilized for award approval. As a condition for the release of funds by the Commission, the awardee must then provide precise project build detail and costing, consistent with the information required before and after bond financing, as outlined in response to Question 10. Upon the discharge of the pledged LLR funds from the initial project(s), the awardee would report the required project level detail to the Commission before dedicating BLLRF funds for subsequent LLR and bond issuance.

Question 7: Should the Commission consider prioritizing projects eligible for loan loss protection based on service levels available in proposed project areas, low-income designations, redlining, the presence or absence of competition in the proposed project area, or other parameters?

RCRC agrees that the Commission should prioritize applications based on area service levels, low-income designation, and digital redlining. However, the presence or absence of

competition in the proposed project area is not material if the area lacks affordable and reliable internet connectivity.

Question 8: What service standards, if any, should the Commission require from projects supported by loan loss protection? Should the Commission require projects to be open access or to deliver certain speeds to ultimate end users? How can the Commission ensure that projects supported by loan loss protection are “future proof” or that they will provide lasting benefits to applicants and their constituents?

The underlying goal of the BLLRF is to enhance the capability of local governments and nonprofits to deploy broadband infrastructure in unserved and underserved areas, where private for-profit providers have historically not provided adequate service, and where public support is necessary. To achieve this goal, all of the following should be required or prioritized in the allocation of BLLRF moneys:

- For reasons explained in prior decisions,¹⁴ broadband infrastructure deployed using financing supported in whole or in part by BLLRF moneys must be open access.
- Prioritize applications that commit to primarily deploying last-mile infrastructure in areas that currently lack reliable and affordable broadband service for all households at speeds of at least 25 Mbps downstream, 3 Mbps upstream, and a latency that is sufficiently low to allow realtime interactive applications.
- Prioritize applications that commit to supporting next-generation service tier availability such as 10 Gbps residential and 100 Gbps business/anchor services.
- Prioritize applications that commit to primarily deploying fiber-to-the-home, with limited use of point-to-point wireless infrastructure, supported by fiber backhaul, where fiber-to-the-home is impracticable.
- Require that broadband infrastructure deployed using financing supported in whole or in part by BLLRF moneys remain under the ownership and control of the local government or nonprofit recipient for the duration of the BLLRF-supported financing.

¹⁴ See, e.g., D.21-01-003.

- Prioritize applications that include participation by public agencies who will act as the lead agency for purposes of the California Environmental Quality Act (CEQA).

Reporting Requirements

Question 9: What BLLRF reporting would support the ability of the Commission and public to access information and monitor progress? Pub. Util. Code Section 281.2 (d) contains reporting requirements for local agencies and nonprofits that receive funds under the BLLRF, as follows:

- ***Biannual progress reports identifying project milestones and percent completions to date and including other information as the commission may prescribe.***
- ***A completion report, including a full description of the completed project, comparison of approved versus actual costs of construction, speed test data for all areas served by the project, and other information as the commission may prescribe.***

Accountability under the proposed “program of work” approach set forth in these comments would be further strengthened through comprehensive reporting requirements. Consistent with Section 281.2(d), BLLRF recipients should be required to submit biannual progress reports and completion reports for each item of broadband infrastructure financed using BLLRF funds. These reporting requirements should be largely similar to the “Semi-Annual and Completion Reporting” requirements set forth in the Revised CASF Program Guidelines, March 2021.¹⁵

Question 10: What, if any, additional ongoing reporting should be required of the BLLRF recipients?

In addition to operational reports, due to the unique nature of BLLRF funds, award recipients should provide detailed fiscal reports both before and after each financing transaction supported by BLLRF moneys. Pre-financing reports would include all of the following, at a minimum:

- Description of the specific broadband infrastructure included in the bond issue, an explanation of how that infrastructure was selected for inclusion based on the aforementioned criteria.

¹⁵ D.21-03-006, Appendix A.

- Financial details, including the total project cost, amount financed, amount of pledged BLLRF funds, other subsidies, anticipated take rates and system revenues, and bond terms and interest rates.
- Anticipated deployment schedule.
- Economic life of all project assets.
- Marketing and outreach plan.

After the financing, biannual reports should be provided regarding bond proceeds expended, take rates and system revenues achieved, and progress toward bond repayment and any anticipated release of the pledged LLR. Additionally, incident reporting should be required promptly in the event that the LLR is drawn upon for debt service.

Financing

Question 11: Should BLLRF funds be kept in the fund, or deposited with the recipient? Why or why not?

BLLRF moneys pledged as LLR should be deposited with the *bond trustee*. (The trustee will typically *not* be the BLLRF recipient, but rather a financial institution with fiduciary obligations to participants in the bond transaction.) Deposit with the trustee will satisfy the requirements of the Budget Act that BLLRF funds be “encumber[ed]” and “liquidat[ed]” by certain dates. Further, having the security for the broadband revenue bonds in possession of the trustee – like other established reserves – will maximize investor confidence (which is particularly important due to the relative novelty of this structure). Finally, as noted in response to Question 12, BLLRF moneys pledged as security for tax exempt revenue bonds may be subject to arbitrage rebate requirements, which would pose a significant administrative burden for the Commission if the funds remained in the State Treasury.

Question 12: How should interest earned on BLLRFs be treated? Should any interest earned on BLLRF funds be returned to the fund? How should interest be treated if BLLRF funds are kept in the fund?

Reserve funds held by bond trustees typically accrue interest. Upon final release of all bond pledges, the entire remaining loan loss reserve funds, including any interest earned on the unused BLLRF funds, should be returned to the Commission; however, arbitrage yield limitations imposed by the Internal Revenue Service in connection with tax-exempt revenue bonds may limit

the amount of such interest. (If BLLRF funds are kept in the fund – which is not recommended – this will require ongoing close coordination between the Commission, the State Treasurer, and the bond trustee in order to ensure that any interest earned complies with the IRS’ arbitrage rebate and other requirements.)

Question 13: For how long should BLLRF funds be allocated (e.g., 10, 20 or 30 years)? Are any statutory or budgetary reforms necessary to accommodate these lengths of time?

To maximize the ability to leverage private funds, while still providing the state with assurance of return on its investment, BLLRF allocations should be made for a period of 40 years, commencing on the date of initial pledge. Broadband revenue bonds typically have a term of 25-30 years, although they may extend to 40 years in some cases. Allowing BLLRF moneys to be pledged for up to 40 years will functionally allow those funds to be re-used for multiple bond issues for an initial 10-15 year period, at least, with the unused funds returning to the Commission upon expiration of the final pledge.

Question 14: Should BLLRF funds cover both the principal and interest of bond financing in the event of default? Why or why not?

Consistent with comments in response to Question 2, in order to provide the best access to the financial market and assurance to investors, BLLRF funds must be available to cover all costs incurred in the debt issuance process.

Question 15: Are there any other recommendations the Commission should consider when developing the BLLRF?

To achieve economies of scale in BLLRF-supported financings, BLLRF funds should be allocated through a single round of applications covering the entire \$750 million budgeted for the BLLRF. Successful applicants would be allocated a defined amount of BLLRF moneys, which must be pledged to support one or more initial bond issues (and deposited by the Commission with the trustee) no later than the expenditure and liquidation deadline in the applicable Budget Act.

As BLLRF funding is restricted to local government agencies and nonprofit organizations, and further limited to entities with the demonstrated capability to "reasonably finance and

implement the infrastructure project,"¹⁶ it is anticipated that the pool of eligible applicants for this funding will be relatively narrow. A single application process will be most efficient for these entities (and the Commission) and will ensure that BLLRF funds are both allocated and expended by the applicable statutory deadlines. Further, having a single, known allocation at the outset will allow successful applicants to strategically plan their initial financing packages and assist in reducing borrowing costs.

III. Conclusion

We appreciate your consideration of our comments contained herein, including Exhibit A, and respectfully request these comments be accepted for filing.

Dated: April 1, 2022

Respectfully submitted,

/s/ Tracy Rhine

Tracy Rhine

Senior Policy Advocate

Rural County Representatives of California

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¹⁶ See Section 281.2(c)

Exhibit A

Rural County Representatives of California Broadband Loan Loss Reserve Fund Whitepaper

Background

Public Utilities Code section 281.2 establishes the Broadband Loan Loss Reserve Fund (BLLRF) in the State Treasury. Moneys in the BLLRF are available to fund costs related to the financing of the deployment of broadband infrastructure by a local government agency or nonprofit organization, including, but not limited to, payment of costs of debt issuance, obtaining credit enhancement, and establishment and funding of reserves for the payment of principal and interest on the debt. The 2021-22 Budget appropriated \$50 million from the General Fund to the BLLRF, and the broadband package announced by the Governor and legislative leaders anticipates additional appropriations in 2022-23 (\$125 million) and 2023-24 (\$575 million), for a total of \$750 million. The Commission is authorized to establish rules for infrastructure projects deployed using BLLRF funds, including eligibility requirements, financing terms and conditions, and allocation criteria, along with reporting requirements.

Proposal

The principal purpose of the BLLRF is to support "financing of the deployment of broadband infrastructure," and consequently a key consideration in developing rules for the BLLRF is to ensure that the eligible use(s) of these funds meet(s) the needs of the financial market in order to secure funding at the lowest available rates and best possible terms. BLLRF support should be structured to leverage the maximum amount of private investment in broadband infrastructure, and to reduce borrowing costs for eligible local government agencies and nonprofit organizations to the greatest extent feasible. Conversely, BLLRF rules should avoid features that will render BLLRF-supported financings unattractive to investors or will unnecessarily increase borrowing costs.

Section 281.2 authorizes use of BLLRF moneys for the "funding of reserves for the payment of principal and interest on the debt" incurred to deploy broadband infrastructure. This is one of the most efficient ways to leverage private investment, and it is proposed that such "funding of reserves" be prioritized in the BLLRF rules. Under this structure, the eligible local government agency or nonprofit organization will issue revenue bonds (i.e., borrow money from investors) to deploy broadband infrastructure. The bonds are then repaid from system revenues (i.e., revenues generated from rates paid by customers and/or internet service providers for use of

the system). The allocated BLLRF moneys will be pledged as a “loan loss reserve” (LLR)¹ to secure repayment of the principal (or both principal and interest) in the unexpected event the system revenues are insufficient. This provides the financial markets with the assurance necessary to attract investment in unserved/underserved areas at reasonable interest rates.²

It is proposed that priority further be given to agencies that identify a long-term program of work, including the ability to re-use the allocated BLLRF moneys to support multiple bond issues over a period of years. Revenue bond covenants often provide for partial release of any pledged security, such as the LLR, once certain financial or operational milestones are achieved – e.g., when actual system revenues reach a specified level sufficient to assure payment of debt service. Such partial release allows that security to be pledged to support another bond issue – effectively leveraging the same LLR funds to attract multiple rounds of private investment.³ Allowing BLLRF funds to be re-used in this manner will maximize the amount of private investment obtained for broadband deployment, and thus the amount of infrastructure actually deployed through the BLLRF.⁴

While eligible local government agencies and nonprofit organizations may be able to describe the initial broadband deployment project(s) to be supported by BLLRF with specificity at the time of application, it will often be impracticable to identify the individual projects to be included in subsequent bond issues supported by “re-used” BLLRF.⁵ Therefore, it is proposed that applicants be permitted (and required) to lay out a program of work detailing the quantitative and qualitative criteria by which projects will be selected for inclusion in the initial

¹ “A loan loss reserve sets aside (reserves) a certain amount of money to cover potential losses (in case of no repayment).” (D.12-05-015 at 119, fn. 162.)

² Broadband revenue bonds are a practicable means of financing only when system revenues are projected to be sufficient to pay the debt service. It is therefore not expected that any debt service payment will actually be made from the loan loss reserve. Nonetheless, broadband revenue bonds are a relatively new financial instrument - and unserved/underserved communities will generally lack any ratepayer track-record to give investors the confidence common in other types of utility bonds. Lenders will thus often require additional security, such as the LLR, to mitigate their lending risk and offer reasonable interest rates.

³ Such “partially” released security typically remains pledged to secure the initial bonds; however, it may be also pledged to additional bond issues, thereby diluting the initial bondholder’s security once the milestones are met. (The security is then effectively shared between the original or subsequent bond issues, either *pro rata*, or with subsequent issues having seniority, depending upon the financing structure.)

⁴ Allowing re-use of the BLLRF to support multiple bond issues will also help build investor confidence and attract investment. The primary source of repayment for broadband revenue bonds are system revenues, and the ability to expand the system may spread lenders’ risk over a larger pool of ratepayers, thus offering advantages in both the initial and subsequent financings.

⁵ It will often take several years to meet the typical milestones for releasing pledged LLR security. Changing conditions during that time period could significantly alter key program criteria in targeted regions, such as service levels, housing density, and access to middle mile infrastructure, removing some potential project areas from proper consideration and adding others.

and subsequent BLLRF-supported bond issues. These criteria may include any or all of the following:

- Percentage of unserved/underserved households in the project area.
- Median household income in the area, including consideration of affordability.
- Number of business and anchor institutions in the area.
- Access to existing or proposed middle mile infrastructure.
- Projected broadband infrastructure cost.
- Projected take rates and system revenues.
- Availability of other federal, state, and local subsidies.
- Demonstrated support in the local community.
- Environmental or other physical constraints.

The program of work must also include criteria and commitments for all infrastructure to be deployed with BLLRF support, including any or all of the following:

- Minimum and maximum download speed, upload speed, and latency.
- Type(s) of technology deployed.
- Whether construction will use directional drilling, trenching, aerial lines, or some combination.
- Anticipated minimum and maximum service subscription rates for customers (which may be adjusted for inflation and/or Consumer Price Index changes for Internet/broadband services)

An applicant's commitment to a clear, detailed set of criteria governing both initial use and re-use of the allocated BLLRF moneys for subsequent bond issues will allow the Commission to hold the applicant accountable for achieving the goals of the BLLRF, while permitting the applicant to maximize those goals through multiple rounds of private investment.

Accountability under the proposed program of work approach would be further strengthened through comprehensive reporting requirements. Consistent with Section 281.2(d), BLLRF recipients would be required to submit biannual progress reports and completion reports for each item of broadband infrastructure financed using BLLRF funds. It is proposed that this reporting be largely similar to the "Semi-Annual and Completion Reporting" requirements set forth in the Revised California Advanced Services Funds (CASF) Program Guidelines, March 2021.⁶

In addition to these operational reports, due to the unique nature of BLLRF funds, it is further proposed that recipients provide detailed fiscal reports both before and after each financing transaction supported by BLLRF moneys. Pre-financing reports would include all of the following, at a minimum:

⁶ D.21-03-006, Appendix A.

- Description of the specific broadband infrastructure included in the bond issue, an explanation of how that infrastructure was selected for inclusion based on the aforementioned criteria.
- Financial details, including the total project cost, amount financed, amount of pledged BLLRF funds, other subsidies, anticipated take rates and system revenues, and bond terms and interest rates.
- Anticipated deployment schedule.
- Economic life of all project assets.
- Marketing and outreach plan.

After the financing, biannual reports would be provided regarding bond proceeds expended, take rates and system revenues achieved, and progress toward bond repayment and any anticipated release of the pledged LLR. Additionally, incident reporting would be required promptly in the event that the LLR is drawn upon for debt service.

It is proposed that BLLRF moneys pledged as LLR would be deposited with the bond trustee. Deposit with the trustee will satisfy the requirements of the Budget Act that BLLRF funds be “encumber[ed]” and “liquidate[d]” by certain dates. Further, having the security for the broadband revenue bonds in possession of the trustee – like other established reserves – will maximize investor confidence (which is particularly important due to the relative novelty of this structure). Finally, as noted below, BLLRF moneys pledged as security for tax exempt revenue bonds may be subject to arbitrage rebate requirements, which would pose a significant administrative burden for the Commission if the funds remained in the State Treasury.

Under the proposed approach, BLLRF recipients would be provided with flexibility regarding whether, for each bond issue, the BLLRF funds are pledged to secure payment of principal only, or both principal and interest – as each has advantages and disadvantages that may weigh differently for each financing. A pledge to cover both principal and interest maximizes investor confidence (and potentially reduces interest rates); however, this effectively decreases the amount that may be borrowed. By contrast, securing only the principal may be somewhat less attractive to investors, but allow for significantly expanded borrowing. These competing considerations may yield different results for individual projects, and therefore the BLLRF recipient would be given flexibility to make that determination based on the circumstances of each separate financing.

To achieve economies of scale in BLLRF-supported financings, it is proposed that BLLRF funds be allocated through a single round of applications covering the entire \$750 million budgeted for the BLLRF. Successful applicants would be allocated a defined amount of BLLRF moneys, which must be pledged to support one or more initial bond issues (and deposited by the Commission with the trustee) no later than the expenditure and liquidation deadline in the applicable Budget Act.

As BLLRF funding is restricted to local government agencies and nonprofit organizations, and further limited to entities with the demonstrated capability to "reasonably finance and implement the infrastructure project,"⁷ it is anticipated that the pool of eligible applicants for this funding will be relatively narrow. A single application process will be most efficient for these entities (and the Commission), and will ensure that BLLRF funds are both allocated and expended by the applicable statutory deadlines. Further, having a single, known allocation at the outset will allow successful applicants to strategically plan their initial financing packages and assist in reducing borrowing costs.

To maximize the ability to leverage private funds, while still providing the state with assurance of return on its investment, it is proposed that BLLRF allocations be made for a period of 40 years, commencing on the date of initial pledge. Broadband revenue bonds typically have a term of 25-30 years, although they may extend to 40 years in some cases. Allowing BLLRF moneys to be pledged for up to 40 years will functionally allow those funds to be re-used for multiple bond issues for an initial 10-15 year period, at least, with the unused funds returning to the Commission upon expiration of the final pledge.⁸

Under Section 281.2(c), the Commission may require applicants to provide information demonstrating the agency's or nonprofit organization's ability to reasonably finance and implement broadband infrastructure deployed with BLLRF support. Broadband revenue bonds supported with public funds are complex financial instruments requiring considerable sophistication and expertise to successfully implement, and long-term operation of the resultant broadband infrastructure is no less complex. It is consequently critical that applicants demonstrate their ability to effectively utilize any allocated BLLRF funds. Such demonstration would include all of the following components: The applicant's administrative capability, including a management team with expertise in bond financing and financial administration; demonstrated relationships with, and support from, financial industry participants necessary for successful bond issuance (e.g., underwriters, financial advisors, bond counsel, etc.); in-house or contracted expertise in evaluating broadband infrastructure project feasibility; and demonstrated relationships with, and support from, experienced public or nonprofit broadband system operators.

The underlying goal of the BLLRF is to enhance the capability of local governments and nonprofits to deploy broadband infrastructure in unserved and underserved areas, where private for-profit providers have historically not provided adequate service, and where public

⁷ See Section 281.2(c), and below.

⁸ It is anticipated that any interest earned on the unused LLR funds would also be returned to the Commission; however, arbitrage yield limitations imposed by the Internal Revenue Service in connection with tax-exempt revenue bonds may limit the amount of such interest.

support is necessary. To achieve this goal, it is proposed that all of the following be required or prioritized in the allocation of BLLRF moneys:

- For reasons explained in prior decisions,⁹ broadband infrastructure deployed using financing supported in whole or in part by BLLRF moneys must be open access.
- Prioritize applications that commit to primarily deploying last-mile infrastructure in areas that currently lack reliable and affordable broadband service for all households at speeds of at least 25 Mbps downstream, 3 Mbps upstream, and a latency that is sufficiently low to allow realtime interactive applications.
- Prioritize applications that commit to supporting next-generation service tier availability such as 10 Gbps residential and 100 Gbps business/anchor services.
- Prioritize applications that commit to primarily deploying fiber-to-the-home, with limited use of point-to-point wireless infrastructure, supported by fiber backhaul, where fiber-to-the-home is impracticable.
- Require that broadband infrastructure deployed using financing supported in whole or in part by BLLRF moneys remain under the ownership and control of the local government or nonprofit recipient for the duration of the BLLRF-supported financing.
- Prioritize applications with demonstrated support from local governments, or groups of local governments, in the target region(s).
- Prioritize applications that include participation by public agencies who will act as the lead agency for purposes of the California Environmental Quality Act (CEQA).

⁹ See, e.g., D.21-01-003.



To: Members of the GSCA Executive Committee
From: Barbara Hayes, RCRC Chief Economic Development Officer
Craig Ferguson, RCRC Senior Vice President
Date: April 21, 2022
Re: Initial Project Area(s) Update

SUMMARY

This memo will provide an update on various aspects of the broadband program development efforts currently underway within both Golden State Finance Authority and Golden State Connect Authority that will benefit member counties.

ISSUE

In August 2021, the Golden State Finance Authority Board of Directors approved the formation of a joint power authority (JPA) under which broadband efforts supporting and benefitting member counties would be managed. That JPA, Golden State Connect Authority, was officially established in December 2021, with a membership that currently includes 38 counties.

At the same meeting, the Board approved a broadband program of work that included the following components:

1. **Foundational Readiness**
Development of broadband strategic plans for member counties that do not already have a plan in place or under development
Action: *Submission of grant application on September 3, 2021, to US Department of Commerce Economic Development Administration (EDA) for funding that would allow for the development of 27 countywide broadband strategic plans.*
Status: *Awaiting final approval of grant application from EDA*
2. **Information Sharing and Capacity Building**
Developing resources and providing platforms for the sharing of information and expertise with member counties that informs, educates, and prompts innovative thinking around broadband deployment and delivery
Action: *Developed the Golden State Connect Authority website which will serve as a platform for information sharing and communication. Additionally, developed a series of print resources: Guide to Broadband Funding Sources and Uses, and Barbed Wire series written by Nevada County Information Technology Officer, Steve Monaghan, highlighting broadband insights and considerations for local governments.*

Status: Will continue to add to resources and increase communication and outreach to local government IT and broadband representatives during critical period as CPUC and federal resources for broadband become available.

Golden State Connect Authority

The third component of the approved broadband program of work falls under the purview of Golden State Connect Authority.

3. Demonstration Project Identification

Identify initial project areas within the thirty-eight member counties of Golden State Connect Authority where open-access, public benefit municipal broadband model can be executed.

Action: Comprehensive business-based analysis was undertaken to determine short-list of initial project areas where model could be executed.

Status: Have completed initial business analysis and identified list of potential initial project areas. Conversations with local governments and potential partners within project areas are currently underway to determine final project area viability.

The focus of the initial project area analysis has been singularly focused on business-based evaluative criteria. This analysis of initial project areas has included the building of foundational elements of the program, as well as specific project area analysis, and has included the following program development and project area review components :

- **Identify Financial Model and Assemble Financial Expertise**
 - Status - Model and team have been identified
- **Identify Initial Project Areas**
 - **Status – Third Level Review analysis in-progress**
 1. First Level Review – (Initial project area review complete)
 - a. Identification of unincorporated areas with specific densities
 - b. Addition of high unserved/underserved areas
 2. Second Level Review – (Initial project area review complete)
 - a. Financial analysis
 - b. Existing market service
 - c. Access to existing middle mile
 - d. Business/anchor institution mix
 3. *Third Level Review*
 - a. *Local government partnerships*
 - b. *Other partnerships*
- **Final Engineering, Financial Review, and Project Structuring**
 - Status – Pending final identification of initial project area(s)

With completion of initial project area analysis, Golden State Connect Authority and each of the local governments included in the initial project areas will execute MOUs that define the roles and expectations of each partner.

In addition, with the formalization of the Golden State Connect Authority and UTOPIA Fiber partnership via the execution of a Memorandum of Understanding between the two organizations, work will now begin on the development of a formal operating agreement between the two organizations.

Funding Opportunities for Broadband

Funding opportunities will become available in the coming weeks/month that will be used to further develop the initial GSCA project areas and should be considered for use by all member counties.

Local Agency Technical Assistance Program

Under SB 156, \$50 million was allocated to the Local Agency Technical Assistance (LATA) program to cover costs associated with pre-development work leading to broadband deployment. Of the \$50 million, \$5 million will be specifically available for tribes, leaving \$45 million available for all other eligible applicants (including tribes).

Key components of LATA include:

- Eligible applicants are local governments, tribes, non-profits
- Access up to \$500,000/year for two years (if funds available) via ministerial review process
- Access up to \$1 million/year over two years (if funds available) via Resolution review process (Commission review)
- Purpose: to fund technical assistance projects that lead to delivery of 100/100 service. Project work can include items such as:
 - Environmental, feasibility, engineering, strategic plans, network design, etc.
 - Reimbursement of staff cost (that otherwise would not be performed except in the case of the project)
 - Allows for inclusion of up to 15% in administrative expenses
- Projects are funded at 100% - no match required
- Reimbursement upon project completion – each project, if more than one
- Projects must be completed within 24 months
- Contractors must be selected, and scope defined prior to award
- Letter of support required from overlapping jurisdictions
- Open application period until funding is exhausted

Member counties are encouraged to engage in conversations with jurisdictions, tribes, rural telephone cooperatives, COGS, and other eligible entities within each county to determine need and strategy for accessing funds to advance broadband deployment. RCRC is exploring ways in which grant-writing assistance can be provided to assist member counties with LATA applications.

It is anticipated that LATA applications may become available as early as May. Therefore, it is recommended that conversations within member counties begin now to ensure readiness for early submittal to the program.

Federal Funding Account (FFA)/Last Mile Funding

As designed in SB 156, dollars allocated for last mile funding within the Federal Funding Account, are split \$1 billion each for a group of counties determined by the CPUC to be “rural” and a group determined to be “urban”. These dollars will be allocated for projects providing broadband service to unserved and underserved areas on a formulaic basis by county. *It is important to note that although the dollars are allocated by county, the money does not flow to the county.* FFA/Last Mile Funding will be available to eligible applicants (ISPs, rural electric cooperatives, municipal broadband providers, etc.) for projects that will deliver broadband to unserved and under-served areas of each county.

It is anticipated that maps delineating the unserved/underserved areas of each California county will be released as early June, followed shortly thereafter by the opening of the FFA/Last Mile application period.

Key components of FFA/Last Mile Funding include:

- Applications will be reviewed against a set of evaluative criteria
- Projects must be completed within 18 months (no CEQA) or 24 months (with CEQA)
- Expenses are paid on reimbursement basis at following completion points – 10%, 35%, 60%, 85%, and remaining 15%
- Administrative costs are capped at 2% of grant
- Ministerial (staff) review of applications not exceeding \$25 million where meet criteria for such review, otherwise requires review by Resolution (Commission review and decision).

RECOMMENDATION

Information Only. RCRC staff will continue to advance the broadband program of work presented above while also continually identifying and evaluating resources and specific areas of technical assistance that can support member counties.