Decision 21-01-003 January 14, 2021

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

DECISION ESTABLISHING PROCESS FOR THE CALIFORNIA ADVANCED SERVICES FUND TO LEVERAGE THE FEDERAL RURAL DIGITAL OPPORTUNITY FUND

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Appendix A – State-Federal Broadband Infrastructure Funds Leveraging Guidelines

DECISION ESTABLISHING PROCESS FOR THE CALIFORNIA ADVANCED SERVICES FUND TO LEVERAGE THE FEDERAL RURAL DIGITAL OPPORTUNITY FUND

Summary

This decision establishes a process to use the California Advanced Services Fund to leverage up to $2 billion in Federal Communications Commission (FCC) funding in the Rural Digital Opportunity Fund (RDOF) Phase I Auction 904. CASF leveraging funds will be awarded to auction winners in the amount of 10 to 20 percent of the Auction 904 reserve price for a given census block.[1,2] This decision further authorizes assistance to RDOF auction winners in meeting RDOF financing and letter of credit requirements.

The Commission adopts the staff proposal to leverage the federal RDOF program, as modified herein. As part of this leveraging initiative, Staff is also authorized to collaborate with a Financing Agency, including executing an MOU and transferring kicker funds, consistent with the rules adopted herein. The final leveraging rules adopted are found in Appendix A.

This proceeding will remain open to consider the issues identified in the Scoping Memo for the remainder of the rulemaking.

1. Background

1.1. Procedural Background

The California Public Utilities Commission (Commission) established the California Advanced Services Fund (CASF) in Decision (D.) 07-12-054. The

[1] The reserve price is the initial level of support, or subsidy, the FCC will offer in the auction, which is a reverse auction; the reserve price is thus the maximum FCC subsidy a winning bidder could receive. See In the Matter of Rural Digital Opportunity Fund; Connect America Fund, Report and Order, WC Docket Nos. 10-90, 19-126, FCC 20-5 (rel. Feb 7, 2020) at para. 23 (RDOF Report and Order), available at https://www.fcc.gov/document/fcc-launches-20-billion-rural-digital-opportunity-fund-0

[2] Links to webpages are provided as a courtesy to the reader and are accurate as of November 20, 2020 unless otherwise noted.

Legislature codified CASF in California Public Utilities Code (Pub. Util. Code) Section 281, and later modified the program via subsequent legislation. Pub. Util. Code § 281 directs the Commission, among other things, to "encourage deployment of high-quality advanced communications services to all Californians that will promote economic growth, job creation, and the substantial social benefits of advanced information and communications technologies…." (Pub. Util. Code § 281(a)). Legislative modifications and other program refinements were implemented in Rulemaking (R.) 12-10-012.

The statutory goal of CASF is to provide broadband access to 98 percent of households in each of the consortia regions by December 31, 2022.[3] CASF consists of the following accounts and programs:

- Broadband Infrastructure Grant Account (Infrastructure Account)
- Line Extension Program (LEP)
- Rural and Urban Regional Broadband Consortium Grant Account (Consortia Account)
- Broadband Public Housing Account (Public Housing Account)
- Broadband Adoption Account (Adoption Account)
- Tribal Technical Assistance

The most recent Infrastructure Account grant application deadline was May 4, 2020, with 54 applications received and pending resolution. Commission Communications Division Staff (Staff) have proposed to approve approximately

[3] Pub. Util. Code, § 281(b)(1)(A). Map 1 on page 7 of the CASF 2019 Annual Report illustrates the distribution of the regional consortia by county: https://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/Communications_-_Telecommunications_and_Broadband/2019%20Annual%20Report%20California%20Advanced%20Services%20Fund%202.pdf.

$32 million in grants, leaving over $100 million in the fund.[4] This is not sufficient funding to meet either program demand or the statutory goal; however, the program continues to make progress.[5]

The previous CASF rulemaking, R.12-10-012, was closed in September 2020. The instant rulemaking was opened on September 2, 2020 to consider additional program refinements, and to respond to any unforeseen circumstances that may arise in 2021. Parties filed comments and reply comments on the Order Instituting Rulemaking (OIR) in September 2020, and a prehearing conference was held on October 1, 2020.[6]

On October 26, 2020, the assigned Commissioner issued the Scoping Memo in this proceeding setting out several refinements and modifications to be considered. The Scoping Memo outlines three phases for the proceeding. This is the first of two decisions anticipated for Phase I. Parties filed comments on the

[4] CASF fund balance as of June 30, 2020 was estimated to be $149 million. (*See* Resolution T-17709), https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M349/K351/349351554.PDF.

[5] *See e.g.*, D.20-08-005 at 14-15: "the requested amount of funding in the May 4, 2020 application cycle is more than twice the balance of the remaining CASF funds [… and] even if all 54 applications [were funded] there would not be a guarantee that the goal of the program would be met [because the applications do not meet the goal]."

[6] Parties filing comments or reply comments and/or appearing at the prehearing conference were: Pacific Bell Telephone Company d/b/a AT&T California (AT&T); Public Advocates Office (Cal Advocates); Central Coast Broadband Consortium (CCBC); California Center for Rural Policy (CCRP); California Cable and Telecommunications Association (CCTA); California Emerging Technology Fund (CETF); Electronic Frontier Foundation (EFF – comments late-filed in November 2020); Frontier California, Inc., Citizens Telecommunications Company of California, Inc., Frontier Communications of the Southwest, Inc. (Frontier); North Bay North Coast Broadband Consortium (NBNCBC – comments late-filed in October 2020); National Diversity Coalition (NDC); Rural County Representatives of California (RCRC); Race Telecommunications, Inc. (Race); Winterhaven Telephone Company, Ducor Telephone Company, Happy Valley Telephone Company, Foresthill Telephone Co., Hornitos Telephone Company, Siskiyou Telephone Company, Calaveras Telephone Company, Volcano Telephone Company, Cal-Ore Telephone Co., Ponderosa Telephone Company, Kerman Telephone Co., Sierra Telephone Company, Inc., Pinnacles Telephone Co. (jointly as the Small LECs); and the Utility Reform Network jointly with the Greenlining Institute (TURN and Greenlining).

Scoping Memo as relates to Phase I on November 6, 2020. Reply comments were filed on November 13, 2020.[7]

This decision is narrow in scope and is on an expedited schedule in response to the passage of Assembly Bill (AB) 82 (Chapter 14, Sec. 8, Statutes of 2020) on June 29, 2020.[8] That legislation specifically authorized CASF to be used to leverage the FCC RDOF program, as described in Section 3 (Jurisdiction) below.

A staff proposal on leveraging the federal RDOF program was issued on October 1, 2020 (Staff Proposal). Parties filed comments on October 15, 2020; reply comments were filed on October 22, 2020.

1.2. Factual Background

Through RDOF, the FCC plans to award up to $20.4 billion nationwide to support building new broadband infrastructure in unserved or underserved areas.[9] The first phase targets the most rural areas and census blocks that entirely lack service. Lack of service is determined by the FCC and federal broadband data, and among other factors includes areas in which no provider offers service of at least 25 megabits per second (Mbps) download and 3 Mbps upload to any location in the census block. Providers were given the

[7] Parties filing comments and/or reply comments were: AT&T; Cal Advocates; CCTA; CETF; Charter Communications Operating, LLC (Charter); Frontier; NBNCBC; NDC; Race; RCRC; Small LECs; and TURN and Greenlining.

[8] 2020 Cal ALS 14, 2020 Cal AB 82, 2020 Cal Stats. ch. 14, 2020 Cal ALS 14, 2020 Cal AB 82, 2020 Cal Stats. ch. 14. Available at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB82.

[9] In the Matter of Rural Digital Opportunity Fund; Connect America Fund, Report and Order, WC Docket Nos. 10-90, 19-126, FCC 20-5 (rel. Feb 7, 2020) at para. 13 (RDOF Report and Order), available at https://www.fcc.gov/document/fcc-launches-20-billion-rural-digital-opportunity-fund-0; June Rural Digital Opportunity Fund Bidding Procedures Notice, available at https://www.fcc.gov/document/fcc-adopts-procedures-rural-digital-opportunity-fund-auction-0.

opportunity to participate in that process, and to challenge designations if they provide broadband service to a census block they contend was incorrectly identified as unserved.

In addition to excluding areas that already have broadband service, RDOF also excludes census blocks subject to enforceable deployment obligations. That is, for an area without infrastructure where a provider has an obligation or has been awarded funds to provide service of 25 Mbps download and 3 Mbps upload or better: "[W]e will exclude those census blocks which have been identified as having been awarded funding through . . . state broadband subsidy programs to provide 25/3 Mbps or better service."[10]

The FCC will award RDOF funding in two phases using a reverse auction process. Funds will be paid to auction winners in equal payments over 10 years.[11] Prior to receiving RDOF funds, RDOF rules require winning bidders to submit detailed information via a long form application.[12] In that long form application, an RDOF recipient must provide an irrevocable standby letter of credit for a portion of the support a provider wins.[13] Hence, service providers cannot receive RDOF funding to deploy their proposed infrastructure without first meeting the necessary letter of credit requirements.[14] Winners must build the proposed infrastructure within the first six years.[15]

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[10] RDOF Report and Order, para. 13.

[11] RDOF Report and Order, at page 65, Appendix A, Final Rules, 54.802(a).

[12] RDOF Report and Order, paras. 86-113.

[13] RDOF Report and Order, para. 98.

[14] See In the Matter of Rural Digital Opportunity Fund; Connect America Fund, Notice and Filing Requirements and Other Procedures for Auction 904, WC Docket Nos. 10-90, 19-126, FCC 20-77 (rel. June 11, 2020) at para 96 (RDOF Auction 904 Procedures), available at https://docs.fcc.gov/public/attachments/FCC-20-77A1.pdf.

[15] RDOF Report and Order, para. 45.

RDOF Phase I, designated Auction 904, opened July 1, 2020 with a $16 billion budget. Bidding began on October 29, 2020.[16] California's 370,986 RDOF Phase I eligible locations[17] were the most of any state in the country; the California maximum for which providers could bid to provide service to eligible households and small businesses was $2 billion.[18] On December 7, 2020 the FCC Public Notice announced the RDOF Phase I Auction 904 winning bidders.[19]

Leveraging has proven successful in other states, including New York and Pennsylvania. In New York, $170 million of federal funding was combined with $200 million of state and private funding to meet the state's goals.[20] In Pennsylvania in 2018, the state broadband investment program used $17 million as incentives to three providers to leverage $35 million in federal Connect

[16] Federal Communications Commission Auction 904: Rural Digital Opportunity Fund, https://www.fcc.gov/auction/904.

[17] Defined as homes and small businesses, pursuant to RDOF Report and Order, para. 2.

[18] California statewide totals: 370,986 locations with a combined 10-year reserve price amount of $2,049,285,320. Calculated based on the final list of RDOF-eligible census blocks and associated reserve prices, as noticed in WIRELINE COMPETITION BUREAU AND OFFICE OF ECONOMICS AND ANALYTICS RELEASE FINAL LIST AND MAP OF ELIGIBLE AREAS FOR THE RURAL DIGITAL OPPORTUNITY FUND PHASE I AUCTION (AUCTION 904), In the Matter of Rural Digital Opportunity Fund; Connect America Fund, Report and Order, WC Docket Nos. 10-90, 19-126, Public Notice, DA 20-1173 (Oct 8, 2020), available at https://docs.fcc.gov/public/attachments/DA-20-1173A1.pdf. List of census blocks and reserve prices is available at https://www.fcc.gov/auction/904.

[19] *See* RURAL DIGITAL OPPORTUNITY FUND PHASE I AUCTION (AUCTION 904) CLOSES - WINNING BIDDERS ANNOUNCED - FCC FORM 683 DUE JANUARY 29, 2021. Federal Communications Commission. DA 20-1422, AU Docket No. 20-34, WC Docket 19-126, WC Docket No. 10-90. Available at https://docs.fcc.gov/public/attachments/DA-20-1422A1.pdf, accessed December 8, 2020.

[20] See In the Matter of Connect America Fund, ETC Annual Reports and Certifications, WC Dockets 10-90, 14-58, Order FCC 17-2 (Jan. 26, 2017), at paras. 11, 13. Available at https://www.fcc.gov/document/fcc-grants-waiver-caf-phase-ii-auction-program-rules-new-york.

America Phase II Auction 903 funding.[21] Experts retained by the Commission estimate that every dollar of CASF funding would leverage four dollars of federal RDOF funding. They further find that state leveraging in California would incent service providers to participate in the auction, enable more competitive bids, and encourage faster buildout than would otherwise occur.[22]

2. Jurisdiction

As noted in Section 1 above, this decision is adopted in response to the passage of AB 82 in June 2020. Before passage of AB 82, a grant from the CASF Infrastructure Grant Account could not fund costs of broadband infrastructure already funded by the federal Connect America Fund program or another similar federal public program. AB 82 deleted that prohibition.

AB 82 also revised the CASF program definition of an "unserved household" to reference RDOF:

> For projects funded, in whole or in part, from moneys received from the federal Rural Digital Opportunity Fund, "unserved household" means a household for which no facility-based broadband provider offers broadband service at speeds consistent with the standards established by the Federal Communications Commission (FCC) pursuant to In the Matter of Rural Digital Opportunity Fund, WC Docket No. 19-126, Report and Order, FCC 20-5 (adopted January 30, 2020, and released February 7, 2020), or as it may be later modified by the Federal Communications Commission.[23]

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[21] See Governor Wolf Announces Broadband Expansion to Over 9,200 Rural Homes and Businesses, Sep. 20, 2018, https://www.penndot.gov/pages/all-news-details.aspx?newsid=534 and FCC Auction 903 Results, https://www.fcc.gov/auction/903.

[22] *See* October 1, 2020 Staff Proposal at 13, citing CostQuest Associates, https://www.costquest.com/.

[23] Section 281(b)(1)(B)(ii), as amended by AB 82 (Stats. 2020, Ch. 14, Sec. 8). This is an exception to the definition of "unserved" in Section 281(b)(1)(i) stating that "unserved household' means a household for which no facility-based broadband provider offers broadband service at speeds of at least 6 mbps downstream and one mbps upstream."

Pub. Util. Code §270(c) directs the Commission to maximize federal funding for California broadband providers:

> The commission, in administering the universal service program funds . . . and in administering state participation in federal universal service programs, is encouraged, consistent with the state's universal service policies and goals, to maximize the amount of federal funding to California participants in the federal programs.

The leveraging envisioned in Pub. Util. Code §270(c) is necessary for CASF to reach the program goal "to approve funding for infrastructure projects that will provide broadband access to no less than 98 percent of California households in each consortia region…" pursuant to Pub. Util. Code § 281(b)(1)(A).

Finally, Pub. Util Code § 281(f)(11)(A) authorizes CASF to grant funds for "[c]osts directly related to the deployment of infrastructure." Accordingly, CASF leveraging funds authorized pursuant to this decision may be used for any legitimate project purposes that are directly related to the deployment of broadband infrastructure, including financing costs for borrowing to deploy broadband infrastructure.

3. Staff Proposal

The Staff Proposal outlines a framework for the Commission to support California service providers pursuing FCC RDOF Auction 904 awards by 1) providing additional California broadband grant funds to RDOF winning bidders; and 2) assisting RDOF winners with financing and in meeting letter of credit requirements.[24]

These measures are intended to:

[24] *See* Email Ruling Requesting Comment on Staff Proposal, filed by Administrative Law Judge (ALJ) Joanna Gubman on October 1, 2020.

- make California broadband projects more competitive in the auction so that more money will be used to increase broadband infrastructure in California,
- incentivize broadband providers to provide public benefits as part of their infrastructure projects, and
- cause broadband infrastructure to be built faster.

Staff proposes two levels of incentives – Level 1 and Level 2 – which are incremental awards that would be provided to RDOF grantees after their federal awards are announced. These leveraging awards are referred to as "CASF leveraging" or "kicker" funds. Funds would be requested via a letter and supporting documentation submitted to Commission staff (Kicker Funding Requests).

Level 1 leveraging awards would provide funding in the amount of 10 percent of the auction reserve price for census block groups receiving RDOF awards. Service providers would be required to commit to building gigabit-capable network infrastructure for which either the last mile or the middle mile components are open access, as defined in Appendix A, Section 4. Level 1 service providers would also commit to following the Commission's Tribal Consultation Policy.[25] Funding recipients that fail to meet the RDOF buildout commitment would be required to return the state leveraging funds.

Level 2 support would consist of a further 10 percent of the auction reserve price, and would be available to service providers receiving Level 1 support and committing to either including fiber indefeasible rights of use for local California Tribes or pursuing Carrier of Last Resort status in their RDOF-funded areas.

[25] On April 26, 2018, the Commission adopted a Tribal Consultation Policy to better communicate and consult with California Tribes. (*See* https://www.cpuc.ca.gov/tribal/.)

Additionally, the Staff Proposal describes how service providers might obtain Commission support for their FCC-required letters of credit and explains that leveraging funds could be used to satisfy letter of credit or other financing commitments.

The Staff Proposal recommends factors the Commission should consider when prioritizing which projects to fund, if more requests are received than can be funded. Staff propose to first evaluate pending CASF applications (May 4 Applications)[26] with overlapping Kicker Funding Requests, then consider additional Kicker Funding Requests, and finally evaluate any remaining May 4 Applications.[27] Staff also recommend several project-related criteria (*e.g.*, magnitude of contribution towards the CASF statutory goal) to consider if only some Kicker Funding Requests can be granted. The proposal further describes the Kicker Funding Request process and requirements, reporting, and payment structure.

Staff also proposes setting a new CASF application window to consider applications for additional CASF-eligible census blocks that are near census blocks receiving CASF leveraging funds but are themselves ineligible for RDOF.

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[26] In D.18-12-018, the Commission established timelines for regular submission of applications for the CASF Infrastructure Account. Due to the COVID-19 public health emergency and in response to some stakeholders' requests, the Commission postponed the deadline for applications in 2020 from April 1 to May 4. At the time of the issuance of the Staff Proposal, all May 4 Applications were still pending. The letter from the Commission's Executive Director setting the May 4, 2020 deadline and establishing an updated timeline is available at https://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/Communications_-_Telecommunications_and_Broadband/Postponement%20of%20CASF%20Deadline%202020.pdf.

[27] According to the Staff Proposal, this prioritization would occur *after* consideration of May 4 Applications that do not have any RDOF-eligible census blocks. May 4 Applications without RDOF-eligible census blocks would be considered first, in accordance with the timeline adopted in R.12-10-012. Since the Staff Proposal was issued, Staff issued Draft Resolutions or Ministerial approval letters for the May 4 Applications that do not have any RDOF-eligible census blocks.

These applications would be considered after all CASF Leveraging and May 4 Applications.

4. Party Comments and Discussion

Eight opening comments were filed in response to the Staff Proposal, and six reply comments.[28] The Commission has carefully considered these comments, which are discussed below, and modifies the Staff Proposal as outlined herein.

4.1. Program Rationale

As described above, the primary motivation for the Staff Proposal is to make California providers more likely to win federal support for infrastructure that provides service at higher speeds and to bring more non-CASF funding to California to meet the CASF statutory goal,[29] particularly in light of the CASF program's limited funds remaining. Most parties, including CETF, CCBC, Cal Advocates, AT&T, RCRC, NDC, TURN and Greenlining, agree with the Staff Proposal's rationale to use state funds to leverage federal funds. RCRC goes further in stressing that serving 98 percent of California households within a consortia region will require "all available [funding] resources . . . including federal, state, local, and private. Allowing maximum flexibility, and innovative project funding will decrease pressure on limited state dollars."[30] RCRC, TURN and Greenlining further comment that the leveraging process is in line with and meets the requirements of the CASF statute, Pub. Util. Code § 281.

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[28] Parties filing comments and/or reply comments were: AT&T; Cal Advocates; CCBC; CCTA; CETF; NBNCBC; NDC; RCRC; Small LECs; and TURN and Greenlining.

[29] *See* above discussion of the statutory goal: to provide broadband access to 98 percent of households in each of the consortia regions by December 31, 2022, based on the current definition of unserved as 6 megabits per second download and 1 megabit per second upload. Public Utilities Code Section 281(b)(1)(A).

[30] RCRC Opening Comments at 2.

CCBC states that the matter is so urgent, and clearly compliant with existing Commission direction, that it should be addressed more expeditiously via Resolution rather than Decision. CETF supported action without a further Commission decision, and RCRC supported fast action to reduce uncertainty about the availability of CASF leveraging funds. CETF, RCRC, TURN, and Greenlining note that while they expect a decision to be issued after Auction 904, the Staff Proposal, if adopted, will nevertheless incentivize broadband providers to pursue federal funds. However, CETF, NBNCBC, and AT&T argue that while the concept of leveraging is commendable, the necessary funds "should be taken from next year's CASF funds, or from a different and perhaps entirely new fund"[31]; that the Commission should request "the Governor and Legislature to immediately pledge to identify $100-$400 million, as an outcome of Executive Order N-72-30, in next year's General Fund Budget or another source";[32] or that "the Commission [should] request the Governor and Legislature to immediately pledge to identify additional funding […] in next year's General Fund Budget or some other alternative to the current outdated funding mechanism."[33]

NDC and RCRC support leveraging funding that helps to provide public benefits and meet state goals in addition to, or beyond, the provision of broadband service. NDC notes that prudent leveraging can increase access to the internet *and* support other government interests, including cross-cutting state "strategic goals." For example, NDC references disaster, emergency relief, and public safety efforts.[34] RCRC cites the provision of public benefits such as open

[31] CETF Opening Comments at 2.

[32] NBNCBC Opening Comments at 3.

[33] AT&T Reply Comments at 2.

[34] NDC Opening Comments at 3-4.

access infrastructure, and monitoring for transportation, earthquake, and fire safety.

Discussion

Adopting this decision is necessary and impactful for several reasons, even though Auction 904 bidding has already concluded. Importantly, the Staff Proposal and publication of specific support amounts provided actionable information to potential RDOF bidders before bidding began. This incentivized RDOF participation and supported more competitive bids. Adopting a modified version of that Staff Proposal supports winning projects' viability at these more competitive bid prices, while also enabling faster buildout and increasing regulatory certainty.

Additionally, participation in the kicker funding initiative provides numerous public benefits. These include open access, gigabit-capable network infrastructure, Tribal consultation, indefeasible rights of use, affordable service plans, and state enforcement of Eligible Telecommunications Carrier (ETC)[35] commitments[36]—including the requirement to offer LifeLine, as further described in Appendix A. These benefits justify the use of CASF funds for service providers that win in the RDOF auction.

In pursuing a leveraging program, the Commission recognizes that RDOF Auction 904 is a time-sensitive opportunity that should be prioritized due to its ability to fund up to $2 billion in essential broadband infrastructure that might

[35] *See* Resolution T-17002 Adopting Comprehensive Procedures and Guidelines for Eligible Telecommunications Carrier Designation and Requirements for Eligible Telecommunications Carriers (May 25, 2006) implementing 47 United States Code section 214.

[36] *See, e.g.*, a commitment to provide service, ability to remain functional, consumer protection, and equal access requirements. Res T-17002 *Adopting Comprehensive Procedures and Guidelines for Eligible Telecommunications Carrier Designation and Requirements for Eligible Telecommunications Carriers*, available at https://docs.cpuc.ca.gov/published/FINAL_RESOLUTION/56844.htm.

not otherwise be built. Parties calling for other funding sources fail to identify how the necessary funds could be secured quickly enough to impact the RDOF process; taking the time to pursue these other funding sources would thus fail to have promoted more – or more competitive – bids. Without a timely alternative, existing CASF funds are the most appropriate source of RDOF leveraging funds.

4.2. Requirements and Criteria for Participation

4.2.1. Low-Income and Tribal Access

Cal Advocates, NDC, Greenlining, and TURN argue that the Commission should require or prioritize applications that offer affordable plans to low-income residents or communities. Cal Advocates also calls for CASF customer protections to be extended to leveraging fund awardees to support low-income households. RCRC, CETF, TURN, and Greenlining support meaningful Tribal engagement and additional incentives for projects providing tribal access through the offer of indefeasible rights of use (IRUs).[37]

Discussion

The Commission strongly prioritizes environmental and social justice, as described in the Environmental and Social Justice (ESJ) Action Plan.[38] In keeping with the ESJ Action Plan, it is essential to prioritize affordable service to low-income individuals and Tribes, and to maintain program (RDOF and CASF) protections for low-income households. The Commission therefore modifies the Staff Proposal as follows.

[37] IRUs are long term leases for unrestricted access to fiber strands at the nearest point of interconnect. The concept and associated requirements are described in greater detail in Appendix A.

[38] *See* the Commission's Environmental and Social Justice Action Plan, available at https://www.cpuc.ca.gov/CPUCNewsDetail.aspx?id=6442461331.

To receive Level 1 funding, grant recipients must provide California LifeLine (voice and broadband subsidies to low-income individuals)[39] within the ETC footprint for the 10-year period of RDOF support. Both the federal LifeLine and state LifeLine programs are considering changes to include more broadband, and so recipients of CASF leveraging funds will be required to follow the rules for both programs as they evolve. To receive Level 2 funding, service providers must also provide a low-income broadband plan consistent with CASF guidelines,[40] for the duration of RDOF support. CASF affordable plan guidelines may evolve and be informed by activities in the Affordability R.18-07-006 and in this proceeding.

4.2.2. Infrastructure Requirements

Several parties support the Staff Proposal's recommendation that gigabit-capable infrastructure be required in order to receive Level 1 funding, including RCRC, The Utility Reform Network (TURN) and Greenlining, and the Small LECs. TURN and Greenlining contend that simply building gigabit-capable infrastructure is insufficient, and that providers should also be required to offer high-speed plans. Further, TURN and Greenlining describe how the CASF leveraging support for gigabit infrastructure aligns with the FCC prioritization of bids for gigabit (low latency) infrastructure, and include examples of how the CASF leveraging support can help California providers bid in the auction.[41] In response to a different question, TURN and Greenlining note that factors other

[39] *See* D.20-10-006, Decision Establishing Specific Support Amounts and Minimum Service Standards for California LifeLine and Authorizing Replacement of Federal Support for Wireline Participants, at 16. Available at https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M348/K751/348751101.PDF.

[40] *See* D.18-12-012 at 21-22; CASF Infrastructure Guidelines at 5.

[41] TURN and Greenlining Opening Comments at 6-8.

than speed can affect broadband service, "including latency (the time it takes a packet to get to its destination), jitter (fluctuations in latency over time), and packet loss (one or more packets fail to reach their destination)."[42] In its opening comments on the OIR, EFF argues that when considering broadband infrastructure projects, the Commission should take into account both latency and the ability to scale to meet growing demand over time.

CCTA and AT&T call for technology-neutral requirements, and CCTA argues that any symmetrical gigabit speed mandates are not technology-neutral because that speed is not feasible for all technologies. CCTA states that such requirements would thus be inconsistent with CASF statutory requirements and would deter participation.[43]

Discussion

As several parties note, gigabit-capable infrastructure offers greater durability and capacity than other infrastructure and is therefore a better use of public funds. Further, because the FCC prioritizes gigabit bids in the auction, bids for gigabit infrastructure can be more competitive and are better positioned to win RDOF support, thereby maximizing federal funding. Accordingly, state leveraging funds will only be granted for gigabit-capable infrastructure. Fiber and hybrid fiber-coaxial network are examples of gigabit capable network

[42] TURN and Greenlining Opening Comments at 9.

[43] CCTA states it is not addressing the Staff Proposal regarding the interplay between CASF and RDOF out of an abundance of caution in light of the Federal Communications Commission's prohibited communications rule. (CCTA Reply Comments, at 1 fn. 3, citing 47 C.F.R. § 1.21002; Rural Digital Opportunity Fund (RDOF) Anti-Collusion Requirements, Robert Osborn, Director, Communications Division.) This Commission has the right to exercise its regulatory authority and obligation to implement and effectuate legislation of the State of California. It also has a duty to provide due process to affected parties. Parties are able to comment on the Staff Proposal's interplay between CASF and RDOF without communicating an applicant's bid or bidding strategy. While parties should be mindful of the FCC's prohibited communications rule, this is not a legitimate reason not to comment, and all parties did in fact have the opportunity to comment on both the Staff Proposal and this Proposed Decision.

infrastructure. However, requiring gigabit-capable infrastructure enables a certain level of performance; it does not mandate specific technologies. Kicker requests that cannot demonstrate that they will deploy gigabit-capable infrastructure will be denied.

Beyond the requirement of gigabit-capable infrastructure, Staff are directed to maximize benefits to Californians by prioritizing projects with higher service quality, considering factors such as speed and latency.

4.2.3. Open Access

Comments on requiring open access were mixed. Some parties, including RCRC, TURN and Greenlining, and NDC support such requirements because open access provides "broad benefits,"[44] competition, and "forward-looking scalability and long-term cost efficiencies."[45] Small LECs, while not entirely opposing some form of open access requirement, argue that the wording is problematic and too far-reaching. Other parties, such as CCTA and AT&T, argue against any such requirements, contending that they will deter participation, are not technology neutral, or are not permitted by statute.

Discussion

Open access offers valuable benefits, including broad public benefits, competition, cost efficiencies, and long-term scalability that will enable more Californians to be served over time. An open access provision will therefore be required for projects utilizing leveraging funds. However, the Commission modifies the Staff Proposal to clarify that open access is required only for RDOF-funded census blocks receiving leveraging funds. Moreover, if a census block contains both middle-mile and last-mile infrastructure, the provider may choose

[44] TURN and Greenlining Reply Comments at 6.

[45] NDC Reply Comments at 2.

to offer open access to either or both types of infrastructure. A requirement that the terms be reasonable is added, while the reference to "wholesale" in the open access definition has been removed.

Open access is planned to be addressed more broadly in the forthcoming Phase I-B decision in this proceeding. Providers receiving leveraging funds pursuant to this decision may also be subject to further clarifications or modifications to the current open access requirements, including any enforcement or verification mechanisms, as may be adopted in that decision.

Beyond any actions taken in this proceeding, service providers also remain obligated to provide non-discriminatory access under 47 United States Code Section 251.[46]

4.2.4. Carrier of Last Resort (COLR)

The Small LECs argue that the process for a Level 2 entity to provide COLR service is not clear and potentially impracticable. CCTA states that such a requirement would not be technology neutral and would not be compliant with CASF statutory requirements. TURN and Greenlining concurred with Small LECs' concern about the timing of the COLR criteria, though they stressed that requiring a COLR designation should be required for Level 2 support.

Discussion

FCC rules require ETC designation for RDOF awardees, and RDOF further requires the provision of standalone voice and broadband. Offering COLR service is not a significant incremental burden, given these federal requirements, and will provide a valuable benefit to residents. Moreover, COLR designation is not required to receive kicker funding. Broadband providers that do not want

[46] Available at https://www.govinfo.gov/app/details/USCODE-2011-title47/USCODE-2011-title47-chap5-subchapII-partII-sec251.

COLR designation may opt for Level 1 funding only, or may qualify for Level 2 funding by providing Tribes with indefeasible rights of use (that is, for every Tribe within 40 miles of a kicker eligible project).

The Commission thus declines to remove the option of COLR designation from the Level 2 participation requirements. However, if both indefeasible rights of use and COLR designation are infeasible, a provider may include justification in its Kicker Funding Request and request to nevertheless be granted Level 2 support by Commission action, such as via Resolution.

A broadband provider requesting Level 2 funding can meet the COLR requirement by filing an Application to be designated a COLR. The COLR Application must include that the Applicant is seeking CASF leveraging funds. If COLR status is not granted, the leveraging funding recipient may be required to return those leveraging funds to CASF, pursuant to the process outlined in Appendix A.

4.2.5. Application for Nearby CASF-Only Eligible Areas to Expand Service

In its opening comments on the proposed decision, CETF supports an additional CASF application window for nearby areas, noting that such applications will enable more efficient use of CASF funds and greater regional connectivity. CETF further argues that such applications should be prioritized.[47] The Commission agrees.

Kicker funding recipients are therefore required to submit a CASF application for nearby CASF-only eligible households. $25 million of currently remaining CASF funds shall be set aside to ensure sufficient funding remains for

[47] *See* CETF Opening Comments on the Proposed Decision (Dec. 31, 2020) at 6-7.

consideration of these applications.[48] This prioritization of nearby applications will increase economies of scale and result in more households receiving service, which advances the CASF statutory goal. Rules are described in greater detail in Section 4.7.

4.3. Letters of Credit and Financing Support

CETF, RCRC, TURN, and Greenlining support the Staff Proposal's inclusion of letter of credit and financing support. However, they call for further specificity.

Discussion

Assistance in quickly and efficiently meeting the RDOF letter of credit requirement will directly contribute to the rapid deployment of broadband infrastructure and is a permissible use of authorized leveraging funding. To that end, Staff may issue letters of leveraging funding availability and transfer leveraging funds to a state agency (Financing Agency) capable of providing a letter of credit or similar guarantee, as set forth in Appendix A.

Staff may also execute a Memorandum of Understanding with the Financing Agency to facilitate collaboration. The Memorandum of Understanding must address leveraging funding rules and requirements, eligible beneficiaries, use of funds, reporting, accountability, and transfer procedures, as described in Appendix A.

Funds transferred to the Financing Agency in support of a letter of credit (or similar guarantee) for a kicker funding recipient will come from authorized kicker funding for that recipient. Any transferred funds that are unused after

[48] See Section 4.4.1, Leveraging Requests Budget and Prioritization.

RDOF accountability processes conclude will be returned to CASF and be available to the CASF leveraging awardee for qualifying project expenses.[49]

4.4. Funding Levels, Budget, and Project Prioritization

4.4.1. Leveraging Requests Budget and Prioritization

Cal Advocates recommends capping or limiting the total amount of leveraging funds awarded at 30 percent of remaining funds, because only 30 percent of remaining locations are RDOF-eligible. While no other parties called for a cap, NBNCBC contends that delaying awards on all 54 May 4 Applications would jeopardize those projects and discourage local efforts in the future.

TURN and Greenlining generally agree with Staff's proposal to evaluate funding requests in the following order:

1. May 4 Applications with no census blocks that are also RDOF-eligible
2. May 4 Applications with associated Kicker Funding Requests
3. Additional Kicker Funding Requests
4. Remaining May 4 Applications, as well as new CASF applications for locations nearby kicker-funded projects

[49] For more information on RDOF accountability processes, see RDOF Report and Order, para. 58-64.

Discussion

Since party comments were received, Staff has acted on all thirteen May 4 Applications that do not have any RDOF-eligible census blocks.[50] Any discussion of the relative prioritization of those applications is thus moot.

The only May 4 Applications remaining to be considered are those with RDOF-eligible census blocks. A delay of some months on these applications will allow the Commission to act on more information, after RDOF awards have been announced. It will also prevent issuance of CASF awards prior to RDOF awards, which would potentially disqualify census blocks receiving CASF grants from receiving federal funds. Moreover, this delay will allow Kicker Funding Requests to be processed prior to CASF requests that do not leverage federal funds, consistent with statutory direction to maximize the amount of federal funding to California RDOF participants.

Once RDOF awards have been announced, Staff will evaluate and issue awards for projects with the following prioritization:

1. May 4 Applications with associated Kicker Funding Requests
2. Additional Kicker Funding Requests
3. Remaining May 4 Applications
4. New CASF applications for locations nearby RDOF-funded projects, as described in Section 4.7

[50] Staff also acted on one May 4 Application that has RDOF-eligible census blocks, for reasons described in Draft Resolution T-17717. *See* Resolution T-17712 Plumas Sierra Telephone–Scott Road; Draft Resolution T-17715 Frontier–Crescent City/Smith River; Resolution T-17716 Race Telecom–Gigafy Williams; Draft Resolution T-17720 DigitalPath–Sutter/Placer. CASF project approvals, including both Resolutions and ministerial letters from Communications Division, are viewable at *Approved CASF Projects*, at https://www.cpuc.ca.gov/General.aspx?id=1057&LangType=1033.

No category-specific budget caps are adopted for any of the above categories of funding requests. CASF is statutorily obligated to strive to serve 98 percent of Californians in each consortia region with the funding currently available. Maximizing RDOF leveraging will make the most efficient progress towards that goal. Funds to leverage RDOF will therefore be limited to the CASF program budget and not further.

As noted in Section 4.2.5, $25 million will be set aside from currently remaining CASF funds and shall not be used for kicker funding or to fund any pending May 4 Applications. The set-aside will ensure that at least that amount of funding will be available to fund CASF grants for locations nearby RDOF-funded projects, while at the same time allowing the Commission to process the kicker funding requests and May 4 Applications as expeditiously as possible.

4.4.2. Project Funding Levels

For state leveraging funds, most parties do not object to the proposed funding levels (10 percent of the RDOF reserve price for Level 1 and an additional 10 percent for Level 2—for a total of 20 percent). CETF commended the 10 percent in leveraging funds and noted that 20 percent may be more impactful. NDC supports leveraging the RDOF program but comments that the Commission should not provide incremental funding for projects that have already received 100 percent funding.

RCRC suggests that public entities and novel funding — including attracting outside investment — should be prioritized or otherwise incentivized in the funding request evaluation process. NDC also recommends the kicker process prioritize applicants that leverage private funding. TURN and Greenlining cite analysis on redlining showing that market-based broadband projects result "in less investment in lower-income census blocks" as compared

to public benefit or mission-driven investment that includes requirements to serve all of a community.[51] TURN and Greenlining further call for the Commission to require that leveraging fund recipients provide economic opportunity to communities of color, citing the Commission's ESJ Action Plan.

Discussion

Leveraging of outside funds (beyond RDOF) further leverages CASF funding and allows more Californians to be served. To incentivize additional leveraging of outside investment, the Commission modifies the Staff Proposal to state that projects incorporating outside investment (beyond CASF and RDOF) will be prioritized if not all funding requests can be granted (*see* Section 4.4.3 below).

Leveraging funding recipients are not permitted to "double dip" – they may not receive CASF funding for expenses that are paid for by federal funding. Kicker fund requests must therefore include an attestation to compliance with the RDOF and CASF prohibitions against double-dipping, and progress reports must detail the source of funds to provide service to RDOF locations and CASF households.

The Commission adopts the funding levels included in the Staff Proposal: 10 percent of the RDOF reserve price for Level 1 and an additional 10 percent for Level 2 (for a total of 20 percent).

4.4.3. Project Prioritization

Several parties call for the Commission to prioritize certain types of projects, as noted in the sections above. Prioritization factors mentioned by parties include: projects that make a significant contribution to program goals,

[51] TURN and Greenlining Opening Comments at 16-17.

meaningfully engage with Tribes and provide service on Tribal lands, predominantly serve low-income communities or serve communities with substantial low-income presence, overlap with a pending CASF application (i.e., a May 4 Application), leverage outside (non-RDOF, non-CASF) funding, or maximize federal funding consistent with Pub. Util. Code §270(c) and AB 82.

NDC comments that CASF leveraging should target the most remote areas that are furthest from existing infrastructure – in other words, those locations that are most difficult to serve due to sparse development. Relatedly, CETF points out past CASF legislation limiting funding for middle-mile infrastructure "makes it even more difficult to reach remote and rural areas".[52] TURN and Greenlining disagree that the presence of non-CASF and non-RDOF funding should be considered at this time.

In their comments on the proposed decision, TURN and Greenlining argue that the Commission should clarify that it may reject requests for kicker funding, "for census blocks that are ineligible for CASF infrastructure deployments or otherwise do not contribute to the goals of the program, even if the project may meet other prioritization criteria."[53]

Discussion

Projects providing the most benefits to Californians should be prioritized for funding. Therefore, if insufficient funding is available to grant all eligible leveraging requests, Staff are instructed to apply the following prioritization factors, as set forth in greater detail in Appendix A:

[52] CETF Opening Comments at 7.

[53] *See* Turn and Greenlining Opening Comments on the Proposed Decision (Dec. 31, 2020) at 6.

- Magnitude of project contribution to the CASF statutory goal
- Extent of overlap between RDOF kicker funding request and associated May 4 Application
- Support for Tribal sovereignty
- Service to low-income communities
- Expected service quality, including speed and latency
- Leveraging of non-CASF, non-RDOF funding
- Difficulty to serve due to sparse development[54]

The above factors are consistent with the leveraging funding eligibility and participation requirements, which provide significant benefits to Californians. Staff are thus directed to prioritize kicker funding requests that go above and beyond the minimum eligibility and participation requirements and thereby provide greater benefits.

Even if sufficient funding exists to grant all kicker funding requests, the Commission may nevertheless deny or partially deny an otherwise eligible kicker funding request, for example if a project is substantially inconsistent with the prioritization criteria above. Such denials must occur via Resolution.

4.5. Kicker Funding Requests and Timing

In its comments, RCRC stresses the importance of aligning the CASF leveraging and RDOF timelines and suggests clarification on whether a request for CASF leveraging is a one-time requirement (for three years of funding), or if a

[54] This factor only applies to projects leveraging RDOF. Defined as a low number of serviceable locations per mile of roadway served by the broadband infrastructure. This factor corresponds with an RDOF criterion for a higher reserve price (a greater amount of federal funding), and thus also supports maximizing federal funding pursuant to Pub. Util. Code §270(c). (*See* RDOF Report and Order, paras. 15-16.)

request is needed for each of the first three years. TURN and Greenlining recommend the Commission clarify the kicker funding payment schedule.

TURN and Greenlining also request clarification on the criteria for disposing of a request via Resolution as opposed to a letter from the Commission's Communications Division. They note that use of a Resolution could lead to a delay, but that there may be reasons for Commission consideration via a Resolution.

Discussion

The Commission modifies the Staff Proposal to clarify that a provider need only submit one kicker funding request. The total leveraging funding budget will be authorized at the time that request is granted. However, because some CASF funds will not be collected until 2022, not all authorized funds will be immediately available.

The Commission further modifies the Staff Proposal to clarify when a request may be disposed of via a letter from the Director of Communications Division, and when a Resolution may be necessary. One situation where a Resolution will be required is if CASF funds are not available to fund all projects. Staff may put a Resolution before the Commission to award or deny requests for funds, prioritizing projects according to the factors in the rules.

Timing is further clarified to address the challenge process, which is an opportunity for providers to demonstrate existing broadband service in a CASF project area. The May 4 Applications have already been subject to this challenge process and cannot be challenged again. Pursuant to the definition of unserved in Pub. Util. Code § 281(b)(1)(B), RDOF-eligible census blocks are unserved.

Moreover and as discussed in the Staff Proposal,[55] providers had an opportunity to challenge the FCC designation of RDOF eligibility for census blocks as part of the RDOF Phase I auction.[56] Accordingly, there will be no further challenge process for CASF leveraging requests for RDOF Phase I census blocks, or for the remaining May 4 Applications.

4.6. Progress Reports and Penalties for Delays

CETF recommends flexibility and a process for a CASF leveraging funding recipient to report if a delay is caused by factors outside its control, such as permitting or litigation. TURN and Greenlining comment that a notification should include the anticipated completion date and information on the cause of the delay, including whether the delay is due to an unexpected event. They note that the Commission can then waive penalties if warranted.

Discussion

The Commission modifies the Staff Proposal to require reporting on the cause of a delay, expected completion date, and whether the factors causing delay are under the control of the applicant. Staff will issue a Resolution to address any projects that fail to meet their buildout requirements. Staff is authorized to recommend the reduction or waiver of penalties if warranted.

4.7. Additional CASF Application Window for Nearby Areas

CETF strongly supports an opportunity for CASF leveraging recipients to apply for additional CASF funds to serve nearby households that are eligible for CASF but not RDOF. RCRC adds that such funding would support regional connectivity and a holistic view. Small LECs suggests that applications for

[55] *See* Staff Proposal at 11.

[56] *See, e.g.*, FCC Auction 904 preliminary list of eligible areas, https://www.fcc.gov/reports-research/maps/auction-904-preliminary-eligible-areas/.

adjacent census blocks be handled on an individual basis. TURN and Greenlining recommend that the award timing be coordinated with that for kicker funding.

Discussion

Support to serve census blocks near RDOF-funded infrastructure will enable more efficient use of funds and greater regional connectivity. Staff are directed to open an additional application window for RDOF award recipients to apply for CASF funding to serve nearby census blocks that are eligible for CASF but not RDOF. Nearby census blocks are defined as being adjacent to, or in a logical path leading to, census blocks with RDOF awards. The applications will be evaluated according to the CASF process adopted in D.18-12-018 (including the challenge process), after all kicker funding requests and May 4 Applications have been considered.

5. Conclusion

The Commission adopts the staff proposal to leverage the federal RDOF program, as modified herein. As part of this leveraging initiative, Staff is also authorized to collaborate with a Financing Agency, including executing an MOU and transferring kicker funds, consistent with the rules adopted herein. The final leveraging rules adopted are found in Appendix A.

This proceeding will remain open to consider the issues identified in the Scoping Memo for the remainder of the rulemaking.

6. Comments on Proposed Decision

The proposed decision of the assigned Commissioner 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. Comments were filed on December 31, 2020 by Cal

Advocates, CCTA, CETF, Frontier, NDC, and TURN and Greenlining. Reply comments were filed on January 5, 2021 by AT&T, CETF, NDC, and TURN and Greenlining. Changes in response to some comments are interspersed throughout the decision.

The Commission notes that CCTA again raises concerns about filing substantive comments in light of the FCC's prohibited communications rule. Contrary to CCTA's claim, the Commission has not dismissed its concerns, and in fact has cautioned parties to be aware of and ensure compliance with the FCC's prohibited communications rule. However, the Commission is establishing general CASF program rules in this proceeding, and the FCC's rules do not require total suspension of essential state regulatory business. The Commission has not asked any party to reveal its intent to participate in RDOF or in the CASF program, nor has CCTA demonstrated how commenting on the Staff Proposal or on this decision would require any party to reveal its RDOF bids or bidding strategies. The Commission ultimately finds CCTA's comments lacking in any analysis showing legal error in the decision.

7. Assignment of Proceeding

Martha Guzman Aceves is the assigned Commissioner and Joanna Gubman is the assigned ALJ in this proceeding.

Findings of Fact

1. The Commission supports deployment of broadband infrastructure to all Californians to promote economic growth, job creation, and social benefits through CASF.

2. CASF has a statutory goal of ensuring broadband access for 98 percent of households in each of the program consortia regions by December 31, 2022.

3. There is currently insufficient CASF funding to meet either the statutory goal or program demand.

4. The Commission estimates that every dollar of CASF funding could leverage up to four dollars of federal RDOF funding.

5. Leveraging up to $2 billion in federal RDOF funds for California broadband projects will help the CASF program better meet both its statutory goal and consumer demand.

6. The potential to leverage federal funds by awarding additional CASF grant funding to RDOF Auction 904 winners has encouraged broadband providers to pursue more federal RDOF funding for California broadband infrastructure that could not otherwise be funded with the remaining CASF budget.

7. The expectation of CASF leveraging grants enabled providers to offer more competitive RDOF bids relative to providers outside the state, bringing more federal funding to California.

8. Awarding 10 to 20 percent of the RDOF Auction 904 reserve price will encourage broadband providers to follow through with their projects as bid, support project viability, speed buildout, and increase regulatory certainty.

9. RDOF is a time-sensitive opportunity and parties have not identified any other feasible source of funding to leverage the RDOF program on the timeframe necessary to coordinate with RDOF Phase I Auction 904.

10. Prioritizing leveraging grants will cause the evaluation of May 4 Applications that do not receive overlapping RDOF funding to be delayed for several months.

11. The benefits of leveraging RDOF to the greatest extent possible outweigh any harm from the ensuing May 4 Application delays.

12. Support to serve census blocks near RDOF-funded infrastructure will enable more efficient use of funds and greater regional connectivity, and it will increase the number of households served.

13. An additional CASF application window will allow for such support to be considered by the Commission.

14. A set-aside of $25 million will ensure that funding will be available for CASF grants for locations nearby RDOF-funded projects.

15. It is Commission policy to prioritize environmental and social justice, as described in the ESJ Action Plan.

16. RDOF offers higher levels of funding (reserve prices) to areas that are more difficult to serve due to sparse development.

17. Prioritizing projects based on the following factors, as set forth in Appendix A, will maximize both federal funding and benefits to Californians: magnitude of project contribution to the CASF statutory goal; extent of overlap between RDOF award and May 4 Application; support for Tribal sovereignty; service to low-income communities; expected service quality, including speed and latency; leveraging of non-CASF, non-RDOF funding; and difficulty to serve due to sparse development.

18. Requiring gigabit-capable infrastructure will enable a certain level of performance; it will not mandate specific technologies.

19. Gigabit-capable infrastructure is prioritized in the RDOF auction and it offers greater durability and capacity than other infrastructure.

20. Requiring gigabit-capable infrastructure will maximize federal funding and is a better use of public funds.

21. Offering open access as set forth in Appendix A will provide valuable public benefits, including competition, cost efficiencies, and long-term scalability. These benefits will enable more Californians to be served over time.

22. Requiring leveraging projects to include the following features, as set forth in Appendix A, will maximize benefits to Californians: gigabit-capable infrastructure; open access; application of the Commission's Tribal Consultation Policy; provision of California LifeLine and federal Lifeline for the duration of RDOF funding; regular reporting; an obligation to apply for CASF grants for nearby CASF-only eligible households; and timely buildout.

23. Providing higher levels of leveraging funding for projects that provide additional benefits, as set forth in Appendix A, will maximize CASF benefits to Californians.

24. Return of leveraging funds for non-performance, along with a penalty payment of 0.75 times funds spent, will ensure project accountability.

25. Broadband infrastructure projects can sometimes be delayed due to factors beyond the project developer's control, such as permitting or litigation.

26. A Resolution is the appropriate procedural vehicle to address non-performance, including return of spent funds, additional penalties, and any exemptions that may be warranted.

27. The May 4 Applications have already been subject to the challenge process.

28. RDOF-eligible census blocks are unserved and were previously subject to a challenge process by the FCC.

29. A further challenge process will not be offered for projects receiving leveraging funds.

30. Service providers cannot receive RDOF funding to deploy their proposed infrastructure without first meeting the RDOF letter of credit requirements.

31. A letter of leveraging funding availability issued by Commission staff will assist RDOF winners in more easily and rapidly receiving a letter of credit or similar guarantee.

32. Assistance in quickly and efficiently meeting the RDOF letter of credit requirement will directly contribute to the rapid deployment of broadband infrastructure.

33. An attestation and detailed reporting of expenses will ensure that no duplicative funding occurs on projects leveraging multiple funding sources.

Conclusions of Law

1. The CASF program was codified by the Legislature in Pub. Util. Code § 281.

2. The Legislature incorporated reference to the RDOF program in Pub. Util. Code § 281 via AB 82, passed in June 2020. AB 82 also deleted the statutory prohibition on using CASF to fund broadband infrastructure already partly funded by the federal Connect America Fund program or another similar federal public program.

3. Pub. Util. Code §270(c) states: "The commission, in administering [CASF], is encouraged, consistent with the state's universal service policies and goals, to maximize the amount of federal funding to California participants in the federal programs."

4. The Commission has jurisdiction to modify CASF to leverage federal RDOF funds, including both directly funding projects and providing assistance in meeting RDOF letter of credit requirements.

5. The Commission should modify the CASF Infrastructure Account to leverage the federal RDOF program.

6. It would be reasonable for the Commission to collaborate with a Financing Agency to assist eligible broadband providers in meeting the RDOF letter of credit requirements. Such collaboration could include executing a Memorandum of Understanding or similar agreement and transferring authorized leveraging funds as set forth in Appendix A.

7. The FCC RDOF rules do not permit awards for census blocks where (1) broadband service is already available, (2) an entity is already obliged to provide broadband infrastructure in the future, or (3) state funding has already been granted to support building of broadband infrastructure.

8. Projects leveraging RDOF funds should be prioritized over other pending CASF infrastructure project applications.

9. The Commission should process Kicker Funding Requests and May 4 Applications as expeditiously as possible.

10. The Commission should evaluate and issue awards for projects in the following order of prioritization: May 4 Applications with associated Kicker Funding Requests; additional Kicker Funding Requests; remaining May 4 Applications; new CASF applications for locations nearby RDOF-funded projects.

11. The Commission should set aside $25 million in CASF funds that will not be awarded for kicker funding or May 4 Applications but may be awarded to new CASF applications for locations nearby RDOF-funded projects.

12. Recipients of leveraging funds should be required to submit a CASF application for nearby CASF-only eligible households.

13. The Commission should prioritize affordable service to low-income individuals and Tribes and ensure consumer protections for low-income households.

14. To receive the funding levels set forth in Appendix A, projects leveraging RDOF funds should be required to provide the associated public benefits set forth in Appendix A.

15. If funding is insufficient to grant all funding requests, projects that best address the prioritization factors set forth in Appendix A should be funded.

16. The Commission may deny or partially deny an otherwise eligible kicker funding request via Resolution, for example if a project is substantially inconsistent with the prioritization factors set forth in Appendix A.

17. Where funded projects are delayed due to factors beyond the project developer's control, it may be reasonable to reduce or waive any non-performance penalties that might otherwise apply.

18. Where funded projects are delayed due to factors beyond the project developer's control, it may be reasonable to exempt a funding recipient from a mandated return of CASF funds.

19. Leveraging funding recipients should not receive CASF funds for expenses that are paid for via federal funding.

20. The federal RDOF program should be leveraged as set forth in Appendix A.

21. Commission staff should be authorized to implement leveraging of the federal RDOF program as set forth in Appendix A, including evaluating funding requests, collaborating with a Financing Agency, reviewing progress reports, and recommending penalties or waivers in the event of non-performance.

O R D E R

IT IS ORDERED that:

1. The California Advanced Services Fund program rules are modified to leverage the federal Rural Digital Opportunity Fund as set forth in Appendix A.

2. Commission staff shall implement the program rules as set forth in Appendix A.

3. Rulemaking 20-08-021 remains open to consider the issues identified in the Scoping Memo for Phase I-B, Phase II, and Phase III.

This order is effective today.

Dated January 14, 2021, at San Francisco, California

MARYBEL BATJER
President
MARTHA GUZMAN ACEVES
CLIFFORD RECHTSCHAFFEN
GENEVIEVE SHIROMA
Commissioners

APPENDIX A

State-Federal Broadband Infrastructure Funds Leveraging Guidelines

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1. Introduction

This Appendix outlines the requirements of the State-Federal Broadband Infrastructure Funds Leveraging Program (hereinafter the Kicker Program or State-Federal Leveraging). The program will provide leveraging funds, or "kicker" funds, from the California Advanced Services Fund (CASF) Infrastructure Account to eligible broadband providers that have received notification of Rural Digital Opportunity Fund (RDOF) Phase I funding.[1] If insufficient funding is available to provide kicker funds to all eligible recipients, projects will be prioritized according to the criteria outlined in Section 7 below.

Kicker funds may be used for any legitimate project purposes directly related to the deployment of broadband infrastructure, including financing costs for borrowing to deploy broadband infrastructure, provided that kicker funds do not duplicate RDOF funding and requests satisfy documentation and reporting requirements in Section 5. RDOF award recipients may also receive non-monetary support, as described in Section 3 below. The program described herein stands on its own, in compliance with California Public Utilities Code (Pub. Util. Code) Section 281, and independent from the CASF Infrastructure Account rules in Decision (D.)18-012-018 unless otherwise specified.

2. Project Funding Levels

Kicker funds are available at two levels (Level 1 and Level 2). Projects receiving Level 1 support will be provided with CASF kicker funds equal to 10% of the RDOF reserve price for each census block receiving those funds (also

[1] Notice of a winning bid is required to receive kicker funds. However, winning bidders need not have completed their long form RDOF applications (described in Section 3 below) in order to apply for or receive kicker funds.

referred to as 10% kicker funding).[2,3] Staff calculated and published values for 10% kicker funding for specified Level 1 census block groups on October 27, 2020.[4]

To receive a Level 2 award, a project must qualify to receive Level 1 support and satisfy additional Level 2 criteria. Projects receiving Level 2 awards will be provided up to an additional 10% of the RDOF reserve price in kicker funding for eligible census block groups, yielding a total of up to 20% kicker funding for the Level 1 and Level 2 awards combined.

3. Letters of Availability for Kicker Funds and Other Financing for RDOF Participations

The Kicker Program includes letter of credit assistance for kicker funding recipients requesting it (as well as non-monetary assistance for kicker funding applicants while a kicker request is pending), as described in the below subsections.

3.1 Letters of Availability of Kicker Funds for Credit Requirements

The Commission may favorably advance the letters of credit required by RDOF by issuing a letter describing state funding availability for the service

[2] The maximum RDOF subsidy a winning bidder could receive is the reserve price. The reserve price is defined as the initial level of support, or subsidy, the FCC will offer in the reverse auction for RDOF funding. See *In the Matter of Rural Digital Opportunity Fund*; Connect America Fund, Report and Order, WC Docket Nos. 10-90, 19-126, FCC 20-5 (rel. Feb 7, 2020) at para. 23 (RDOF Report and Order), available at https://www.fcc.gov/document/fcc-launches-20-billion-rural-digital-opportunity-fund-0

[3] Links to webpages are provided as a courtesy to the reader and are accurate as of November 20, 2020.

[4] See *Specific Support Amounts for CPUC's RDOF Post-Auction Funds Leveraging – Updated 10/27/2020*, available at https://www.cpuc.ca.gov/communications/federalfunding/. Staff provided notice that this document would be published in the Staff Proposal issued on October 1, 2020. The document was produced as a courtesy to applicants; the list does not include all census block groups and lists only Level 1 kicker amounts.

provider's infrastructure plans, addressed to both the interested bank and to the FCC.

Entities that have submitted kicker funding requests that want this letter may, to the extent consistent with the RDOF prohibited communication rules,[5] confidentially communicate with staff to provide background and details relevant to the letter of credit requirements. Staff is then assigned the task of preparing letters detailing CASF support for RDOF Phase I auction winners. Entities need not have received a kicker funding grant in order for staff to offer this support; RDOF participation alone qualifies the applicant to receive assistance.

3.2 Other Financing Support

Kicker funds may be used to fulfill letter of credit requirements and other financing commitments. Staff may assist kicker funding recipients to secure financing by collaborating with one or more other state agencies, such as the California Infrastructure and Economic Development Bank (IBank), that are capable of providing financing (hereinafter Financing Agency). Specifically, staff is authorized to:

- Transfer kicker funds to the Financing Agency, in accordance with projects' awarded kicker funding, as a reserve to meet letter of credit or other RDOF funding requirements;[6]
- Collect documentation on the Financing Agency's behalf that is necessary for that agency to encumber funds;

[5] See *RDOF Auction 904 Procedures*, Section G "Prohibited Communications and Compliance with Antitrust Laws" for a discussion of the FCC prohibited communications rules (paras. 146-176); see also 47 C.F.R. § 1.21002.

[6] Funds transferred to the Financing Agency must be for application to a specific project receiving kicker funding and will count towards that project's awarded kicker funding budget. Total funds transferred to the Financing Agency may not exceed $50 million.

- Otherwise work with the Financing Agency to support kicker recipients to obtain letters of credit, pursuant to the rules outlined in this Decision; and
- Facilitate its collaboration with the Financing Agency by executing a Memorandum of Understanding (MOU) or equivalent collaboration agreement with the Financing Agency.

Any agreement or MOU executed pursuant to this subsection shall outline the roles, responsibilities, and deliverables of each agency's staff. The MOU must be binding on both agencies and comply with this Decision. Following are required content areas of the MOU:

- Rules and Requirements – How the MOU complies with the CASF kicker rules and requirements.
- Eligible Beneficiaries – Kicker funding recipients will be the only eligible beneficiaries of the fund, and funds may only be used towards projects approved by staff for kicker funding.
- Performance Criteria – What performance criteria are required of a beneficiary. These shall include, at a minimum, the participation criteria adopted in this Decision.
- Use of the Funds – Situations in which the letter of credit funds will be drawn upon to recover RDOF support funds, according to the RDOF rules.
- Reporting – Reporting on status, use, and other aspects of the funding.
- Accountability – Funds must be returned to CASF if required pursuant to this Decision
- Process for transferring funds from CASF to the Financing Agency
- Unused Funds – Process for returning unused funds if broadband provider requests are lower than the amount transferred from CASF

The Commission designates authority to execute an agreement in accordance with this decision to Staff.

4. Eligibility and Participation Requirements

Requirements for Level 1 and Level 2 support are described in this section, followed by more detailed definitions and requirements.

4.1 Level 1 Support

Level 1 kicker funding and support will be offered to broadband providers that meet the below eligibility criteria and further commit to all the participation requirements that follow. Terms are described in greater detail in Section 0.

Level 1 Project Eligibility Requirements

1. Requestor awarded RDOF Phase I Auction 904 funding for the project[7]
2. Commitment to build gigabit-capable network infrastructure

Level 1 Provider Participation Requirements

1. Provision of open access for RDOF-funded infrastructure in all census blocks receiving kicker funding
2. Use of the Commission's Tribal Consultation Policy as guidance for meaningful engagement and discussion regarding service on Tribal lands[8]
3. Provision of California LifeLine, in addition to federal LifeLine, to eligible households in the RDOF project footprint for the duration of the RDOF funding (10 years)[9]

[7] As verified by the post-auction FCC public notice. The subsequent long-form application need not yet be complete, and RDOF funds need not have been transferred.

[8] See https://www.cpuc.ca.gov/tribal/

[9] Currently, California LifeLine provides a subsidy of $14.85 per subscriber per month for wireline service, as determined in D.10-11-033. More recent Lifeline decisions, such as D.20-10-066, determine how that amount will change as federal subsidies change. Additional changes adopted in R.20-02-008 or a successor proceeding will also apply to projects receiving kicker funding.

4. Regular progress reports and timely buildout of the infrastructure, as described in Section 5 below (Reporting and Accountability)
5. Application for Nearby Areas to expand service as described in Section 10.

4.2 Level 2 Support

To the extent that CASF funding is available, Level 2 kicker funding will be provided to broadband providers that meet the below eligibility criteria and further commit to the participation requirements that follow. Terms are described in greater detail in Section 0 Requirement Definitions and Details.

Level 2 Project Eligibility Requirements

1. Qualification for Level 1 support

Level 2 Provider Participation Requirements

1. Level 1 participation requirements
2. Provision of low-income or affordable broadband plans for low-income consumers served by RDOF-funded infrastructure, for the 10-year duration of RDOF funding
3. One or both of the following:
    a. Offering Indefeasible Rights of Use at no cost for fibers for all California Tribes located within 40-miles of RDOF-funded last-mile or middle-mile routes
    b. Designation as a Carrier of Last Resort (COLR) in the service provider's RDOF-funded areas

If a provider is not already a COLR in the RDOF-funded project area, participation requirement 3b above may be satisfied via an Application to provide COLR service, contingent upon subsequent designation as COLR. If neither option 3a nor option 3b is feasible for a given project, a provider may include justification in its Kicker Funding Request and request to nevertheless be granted Level 2 support via Resolution.

If a funding recipient pursues option 3b and is unable to secure COLR designation, the recipient must provide a letter to the Director of the Communications Division explaining the circumstances. If the letter demonstrates that the funding recipient made a good faith effort to achieve COLR designation, has no ability to instead satisfy requirement 3a due to the project's geographic location, and is providing other reasonable public benefits that merit continued funding, the Director of the Communications Division will issue a letter allowing the kicker funding recipient to continue to receive Level 2 support. Otherwise, funding must be returned to CASF.

4.3 Requirement Definitions and Details

The following terms and requirements are defined for use in the context of the Kicker Program. They are not precedential for use in other aspects of the CASF program, or in other Commission proceedings.

Affordable or low-income broadband plan – Plans should be equivalent, at minimum, to those described in D.18-12-018: an affordable plan for low-income consumers.[10] Further, the RDOF Eligible Telecommunications Carrier requirement includes the provision of service at rates comparable to those paid for similar services in urban areas.[11] Acceptable affordable or low-income plans may be further specified by the Commission in this proceeding.

Gigabit-capable network infrastructure – Network infrastructure that has been demonstrated to reliably provide 1,000 megabit per second (Mbps) connections to each individual eligible home and small business location in a designated deployment. Technologies will be evaluated by Staff considering

[10] See D.18-12-012 at 21-22; CASF Infrastructure Guidelines at 5.

[11] RDOF Report and Order, para. 42 ("All Rural Digital Opportunity Fund support recipients, like all other high-cost ETCs, will be required to offer standalone voice service and offer voice and broadband services at rates that are reasonably comparable to rates offered in urban areas.")

relevant technical standards and deployment information (including the ability to provide gigabit-capable network infrastructure to all project locations).[12] If a broadband provider is not able to prove its technology will provide 1,000 Mbps to all project locations on a given project, that project will not be eligible for kicker funding.

Indefeasible Rights of Use (IRUs) – Long term leases (30 or more years) for unrestricted access to at least two fiber strands at the nearest point of interconnect to every Tribe within 40 miles of the project area. A point of interconnect must be available or constructed at a point on the fiber route which is convenient and possible for Tribal interconnection. The IRU requirement does not require a service provider to construct a spur (fiber infrastructure connection) beyond the point of interconnect. IRU fibers must be provided at no recurring or ongoing fee. However, reasonable costs for the initial connection may be charged by the service provider.

Last-mile open access – Neutral host or services-based model where a customer can choose among Internet Service Providers that offer service over the same last-mile network infrastructure. Last-mile infrastructure is the portion of the broadband infrastructure installed from the central office, head end, or other interconnection facility to a customer premises.

Middle-mile open access – Non-discriminatory access model where access to the middle-mile network infrastructure is available for all providers. Middle-mile infrastructure is the portion of the broadband infrastructure that connects one middle mile interconnection facility (such as a central office or head end) to another. Only RDOF-funded middle mile infrastructure receiving kicker funds is

[12] Staff will post a list of technologies presumed to be gigabit-capable to CASF website. Requests for projects using other technologies must include evidence of the capabilities expected for the specific project.

subject to the rules outlined in this decision. Middle-mile kicker-eligible infrastructure can support various last-mile technologies, including fixed wireless. Eligible middle mile infrastructure for open access may traverse between census blocks and therefore may not necessarily fall within the boundaries of census blocks with RDOF locations.[13]

Open access – Can apply to either or both of two types: (1) last-mile open access or (2) middle-mile open access. A provider of open access infrastructure offers non-discriminatory access to any interested provider on reasonable and equal terms.[14] A provider can offer open access in a given census block for last-mile infrastructure, middle-mile infrastructure, or both. This rulemaking (R.20-08-021) may consider mechanisms to verify and enforce the provision of open access network elements (e.g., in Phase I-B), and those mechanisms may be applicable to projects receiving kicker funding.

5. Reporting and Accountability

5.1 General Reporting Requirements

Recipients of CASF kicker funds are required to report the following:

- Buildout status or attainment of service milestones (no less frequently than reported to the FCC).
- Attestation to compliance with the RDOF and CASF prohibitions against double dipping.[15]
- Reporting and documentation of costs not covered by the CASF program, including information on the amount,

[13] Middle-mile infrastructure that includes leasing infrastructure can meet the open access requirements.

[14] For guidance on open access definitions, terms, requirements, and processes see *Broadband USA Fact Sheet: Broadband Technology Opportunities Program Nondiscrimination and Interconnection Obligations* (Nov. 10, 2020), Attachment 2 to CETF Opening Comments on Rulemaking 20-08-021, available at https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M346/K842/346842785.PDF

[15] Kicker funding recipients may not receive CASF funding for expenses that are paid for by federal funding.

separately, of RDOF and kicker funds to service each location or household.

- Any requests for payment, including substantiation of costs, as described below.

Staff will develop a reporting template and set submission deadlines to ensure consistent and streamlined submissions. All reports must be submitted to the CASF team at CASF_Application_Questions@cpuc.ca.gov or to a specified designee.

The reporting template developed by staff shall be informed by the CASF Infrastructure Account rules approved by D.18-12-018 to include information on: Information Required from Applicants (Section 8), Reporting (Section 13), CEQA Payment (Section 15), Execution and Performance (Section 16), and Compliance Changes Pursuant to CASF Performance Audit (Section 17).

5.2 Open Access Criteria Compliance

Kicker funding recipients must report on their compliance with open access requirements including non-discrimination, interconnection, access to wholesale services, access to information, and access to agreements. Phase I-B of this rulemaking (R.20-08-021) may consider additional mechanisms to ensure third-party access to the infrastructure, and to verify and enforce the provision of open access network elements.

5.3 Build-out Requirements and Default

Service providers that default on their build and service level commitments will be subject to increasing levels of penalties by the FCC, culminating in fines, return of FCC funding and potentially draws on the letter of credit funds.[16] Any recipient of kicker funds that is subject to an FCC Tier 4 non-

[16] *RDOF Report and Order*, paras 58-64.

compliance action at year six[17] must also return to the Commission all the kicker funds awarded, as well as pay an additional penalty of 0.75x of awarded kicker funds. This notwithstanding that some recipients may use kicker funds for a letter of credit. If a kicker funding recipient is not able to pay back kicker funds the Commission will use available mechanisms to collect kicker funds from any provider in default, including but not limited to, revoking operating authority or calling on a telephone corporation's bond.

Kicker funding recipients can meet both kicker funding and RDOF buildout requirements by building to all locations in the awarded project area earlier than year six.

A provider that cannot satisfy the above buildout requirements must report in writing, by email and hardcopy letter to the Director of the Communications Division and CASF Team (at CASF_Application_Questions@cpuc.ca.gov or later designated contact), a new anticipated completion date, what factors caused the delay, and whether the factors were under the control of the grantee or outside of the grantee's control. If the buildout requirement is not met, staff may present a Resolution to the Commission to address the non-performance, return of CASF funds, and 0.75x penalty. If the reasons for lack of build are determined to be unavoidable, staff may recommend an extension of time and/or reduction or waiver of penalties.[18]

If the grantee cannot complete the project within the specified RDOF Phase I timeline, the grantee must notify the Communications Division Director and CASF Team (at CASF_Application_Questions@cpuc.ca.gov or later designated

[17] See *RDOF Report and Order*, para. 63 wherein a support recipient that is in Tier 4 status during the build out period or has not deployed to 100% of the CAM locations (or FCC-adjusted locations) by the end of year 6 must return the USAC payments.

[18] Unavoidable circumstances are those which are determined by staff to be those which could not be anticipated or planned for.

contact) as soon as it becomes aware that it may not be able to meet the timeline and must provide a new project completion timeline.

6. Kicker Funding Payments

Approval of kicker funding support will not be announced until after the FCC announces the Auction 904 winners.[19] Funding is anticipated to be paid in RDOF program years one to three (calendar years 2021-2023), and can be applied towards any reasonable project expenses.

Staff will release the first kicker funds payment upon satisfactory submission of a funding recipient's first report to the CASF Team (and Director of the Commission's Communications Division). This submission must also include an invoice, request for funding, and other required information as described in Attachment 1. Subsequent payments will be calculated according to milestones set by staff no less frequently than twice per year; after the close of each fiscal year—July 1 — in 2021-2023; and in response to substantiated requests.

Payments will be based on submitted receipts, invoices and other supporting document showing expenditures incurred for the project. Total payments (including transfers from the Financing Agency, as discussed below) cannot exceed the kicker funding budget authorized for the project.

Requests for funding via a Financing Agency to support RDOF letter of credit requirements (see Section 0 above) will be processed by the Financing Agency and subject to any submission requirements set by that agency. However, kicker funding recipients must email the following associated documentation to the CASF Team:

[19] If the FCC releases RDOF winners in separate tranches, kicker funds will be awarded after the majority of California RDOF awards are announced by the FCC.

- A copy of any funding requests submitted to the Financing Agency
- A copy of any approval or rejection notification provided by the Financing Agency
- Documentation of any ensuing funds transfers

Documentation must be submitted within 15 days of the relevant event (e.g., within 15 days of submission of a funding request to the Financing Agency). Any funds transferred by the Financing Agency will be counted as a kicker payment; along with direct transfers from CASF, they are subject to the total kicker funding budget approved for the project.

Invoices submitted are subject to a financial audit by the Commission at any time, from the date of the first kicker funding award until 3 years following completion of the project. If portions of the 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.

7. Kicker Funding Requests

Staff shall provide deadlines by which RDOF award recipients may apply for kicker support. Requests shall be submitted via email to the CASF Team (CASF_Application_Questions@cpuc.ca.gov). Requests must include the information specified in Attachments 1-3, including the following: basic applicant information; RDOF award data including census blocks, locations, reserve price, and funding awarded; requested level of support (Level 1 or 2); budgets, justification, attestations, and build plans sufficiently demonstrating that applicant meets the eligibility and participation requirements specified in this document; and an attestation that all required information has been submitted.

Staff shall review kicker funding requests to evaluate whether they meet the requirements laid out in this document. If there are CASF funds available to grant kicker funds to all eligible applicants, eligible requests may be approved via a letter from the Director of the Communications Division, and rejected requests may receive a letter explaining the reason for their rejection. Staff may present a Resolution to the Commission to award or deny kicker funds to kicker funding applicants, if warranted.

If CASF funds are not sufficient to fund all kicker projects, staff shall put a Resolution before the Commission to award or deny funds, prioritizing projects according to the factors in Section 9.

If sufficient funding exists to grant all kicker requests, the Commission may nevertheless deny a kicker request that is eligible for funding if it is substantially inconsistent with the project prioritization criteria in Section 9. Such denials must occur via Resolution.

Once a kicker funding request has been approved, payments and other support for the project will be provided as outlined in the sections above. An additional challenge opportunity will not be provided for any census block that is also included in a May 4 Application, whether or not that census block also applies for kicker funding. Census blocks receiving kicker awards will also not be subject to any additional challenges.

8. Program Prioritization

The table below outlines the order in which kicker funding requests and May 4 Applications will be processed. Funds will be awarded to projects in a given category before moving on to the next category, but all award letters or draft Resolutions are anticipated to be issued in early 2021. To preserve RDOF (and kicker funding) eligibility, pending May 4 Applications with RDOF-eligible

census blocks (included in Categories 2 and 4 in the table) will be processed after the FCC RDOF awards are announced.[20]

Category	Project Area Contains RDOF Locations	Request Type	Priority
1	No	**May 4 Application without RDOF-eligible census blocks**	N/A - Already approved or pending before the Commission
2	Yes	**May 4 Application + Kicker Funding** The project areas must include at least one overlapping census block.	Highest priority
3	Yes	**Kicker Funding without overlapping May 4 Application**	High priority – after Category 2
4	Yes	**All remaining May 4 Applications** May 4 Applications containing RDOF-eligible census blocks where the applicant did not win RDOF support for those blocks	Medium priority – after Category 3
5	No	**New CASF application window for nearby areas** See Section 10.	Medium priority – processed after Category 4, but has $25 million set-aside

Category 1: For May 4 Applications with a project area that does not contain any RDOF-eligible census blocks, the applications will continue to be considered for the CASF subsidy originally requested and will be evaluated pursuant to the CASF rules adopted in D.18-12-018.

[20] The Commission's Executive Director has extended the deadline accordingly for Commission action on the May 4 Applications that include RDOF-eligible locations. https://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/Communications_-_Telecommunications_and_Broadband/CASF%20Deemed%20Denied%20Letter%20to%20Applicants%2011-13-20.pdf

Category 2 and 3: These categories are for RDOF winners that have overlapping May 4 Applications (Category 2) and those RDOF winners that do not have overlapping May 4 Applications (Category 3).

Category 4: Some May 4 Applications may include RDOF-eligible census blocks, yet the applicant may not have been awarded RDOF funds for any of those blocks. These non-RDOF-winning May 4 CASF Applications will be evaluated on a case-by-case basis after Category 3 funding requests, pursuant to the CASF infrastructure rules adopted in D.18-12-018.[21]

Within each category, projects will be prioritized pursuant to the factors in Section 9 below.

9. Project Prioritization

Staff will use the following factors (not in ranked order) to prioritize projects within each category for funding:

- Magnitude of project contribution to the CASF program goal;[22]
- Extent of overlap between RDOF kicker funding request and associated May 4 Application;
- Support for Tribal sovereignty;[23]
- Service to low-income communities;[24]
- Expected service quality, including speed and latency;

[21] If a different entity won RDOF in a census block covered by a May 4 CASF Application staff may choose to not to consider a CASF grant for that May 4 Applicant.

[22] See Pub. Util. Code §281(b)(1)(A), which states: "The goal of the program is, no later than December 31, 2022, to approve funding for infrastructure projects that will provide broadband access to no less than 98 percent of California households in each consortia region…"

[23] Demonstrated via Tribal Council support for a proposal to provide service on Tribal lands and/or Tribal Council recognition that a provider has meaningfully engaged with a Tribe.

[24] Defined as service to census block groups within which the median income is less than the California Alternate Rates for Energy (CARE) standard for a household of four. This value is $52,400 through May 31, 2021, pursuant to D.16-11-022 at 18 and Pub. Util. Code §739.1(a). The value is updated regularly in the CARE proceeding, A.19-11-003, et. al. See http://www.cpuc.ca.gov/General.aspx?id=976 for CARE program requirements.

- Leveraging of non - CASF, non-RDOF funding; and
- Difficulty to serve due to sparse development.[25]

If a kicker funding request with an associated May 4 Application is approved, staff will endeavor to award both simultaneously. If there is insufficient funding for all kicker funding requests (and associated May 4 Applications), staff may authorize full funding for projects that best meet the above criteria, and will not authorize further awards once funding has been exhausted.

10. New CASF Application Window for Nearby Areas

Staff is assigned the task of opening an additional application window for RDOF award recipients that (1) request kicker funds for an RDOF-supported project and (2) did not submit a May 4 Application with census blocks overlapping or adjacent to that RDOF project. These providers must submit CASF applications to serve CASF-eligible households that were not RDOF eligible, provided that the households are in census blocks near the RDOF locations. Nearby census blocks are defined as being adjacent to, or in a logical path leading to, census blocks with RDOF awards. The applications will be evaluated according to the CASF process adopted in D.18-12-018.

These applications will be considered only after the kicker funding requests and May 4 Applications have been considered.

It may be most time-efficient for staff to assign priority to RDOF-adjacent projects in the next regular CASF application window, rather than opening a separate application window. Offering priority to RDOF-adjacent projects

[25] This factor only applies to projects leveraging RDOF (Categories 2 and 3). Defined as a low number of serviceable locations per mile of roadway served by the broadband infrastructure.

within the existing CASF timeframes and processes will be considered compliant with this decision.[26]

[26] This document will be revised to indicate that participation in this application window will be mandatory for kicker funding recipients, if applicable.

Attachment 1. Required Kicker Request Information

1. Requesting service provider
    1. Entity Contact Information
        1.1.1. Physical mailing address
        1.1.2. Website Address
        1.1.3. Phone Number
    2. Kicker Request Contact
        1.2.1. First and Last Name, Title, Physical Mailing Address
        1.2.2. Email Address
        1.2.3. Phone Number
2. Entity information
    1. Indicate whether entity holds a Certificate of Public Convenience and Necessity in California
3. Rural Digital Opportunity Fund California Award Information
    1. Census blocks, locations, and support amount won in the auction
    2. Census block groups listed in the "Specific Support Amounts for CPUC's RDOF Post-Auction Funds Leveraging - Updated 10/27/2020"[27]
4. Project and budget information

How the project is eligible and meets specified participation requirements, with supporting documentation.

5. Supporting documentation
    1. Attestations
    2. Documentation

The letter must include supporting information such as maps, census blocks, and justification for the extra funding that includes a breakdown of costs, i.e., equipment and labor costs that were not covered by RDOF.

[27] https://www.cpuc.ca.gov/broadbandfederalfunding/ The Level 1 kicker funding documentation on the Commission's website does not specify Level 1 support for all RDOF-eligible census blocks. In a provider's funding request letter, providers may request kicker funds for any RDOF-eligible census block.

6. Project Summary/Summaries (distributed publicly)

The applicant must submit a Project Summary, which Communications Division Staff will post on the CASF webpage. The applicant also must submit the Project Summary. The summary must include the following information:

1. Company/Applicant's name.
2. CPCN/U-Number or WIR or pending CPCN/WIR application number.
3. Contact person.
4. Project title.
5. Named project location(s) (Community/County).
6. Amount of CASF kicker funding requested.
7. Map of the proposed project area.
8. The number of locations by census block
9. A description of the major infrastructure to be deployed: miles of planned fiber, Central Offices used, number of remote terminals/fiber huts/wireless towers to be built, and if an IRU is used.
10. Estimated breakdown of aerial and underground installation.
11. Description of proposed broadband project plan for which CASF funding is being requested, including the type of technology to be provided in the proposed service areas:
    1. 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 contains 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.
    2. Identification of the leveraging of existing available facilities (e.g., interconnection in lieu of overbuilding existing facilities of another provider).

7. Information about projects to serve nearby CASF-only eligible households
    1. Including, but not limited to, application(s) or commitment to file application(s)

Attachment 2. Guidance to Staff on Information to Require from Broadband Providers Requesting a Letter of State Funding Availability

1. Kicker Fund Information
    1. Authorization to bid in the auction
    2. Awarded support (and associated locations), if available
    3. Requests for kicker funds, if available
2. Proposed Financing Description, including proposed amounts to build infrastructure and provide RDOF service, and (if applicable) that would be a basis to meet Kicker criteria
3. Documentation required to support or justify the above
4. Request for confidential treatment and supporting documentation
5. Affidavit attesting to the veracity of the information provided.

Attachment 3. Sample Affidavit Showing Information Required from Kicker Funding Requestors

AFFIDAVIT

STATE OF _____

COUNTY OF _____

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 California Advanced Services Fund Kicker Request (hereinafter Kicker Funds), I am competent to testify to them, and I have the authority to make this Request on behalf of and to bind the Company.

I further swear or affirm that _____ [Name of Requestor] shall fulfill the following requirements:

1. Requestor has filed or will timely file with the Federal Communications Commission all forms required by the Federal Communications Commission before spending kicker funds.
2. Requestor agrees to comply with all lawful city, county, or city and county regulations regarding the time, place, and manner of using the public rights-of-way, including but not limited to, payment of applicable encroachment, permit, and inspection fees.
3. Requestor possesses the financial, legal, and technical qualifications necessary to construct and operate the proposed system and promptly repair any damage to the public rights-of-way caused by Requestor.

4. Requestor is not in violation of any final non-appealable California Public Utilities Commission order.

I further swear or affirm that _____ [Name of Company] agrees to comply with all federal and state statutes, rules, and regulations, including, but not limited to, the following:

_____ [Name of Requestor] is a single identifiable entity that is qualified to do business in California and has verifiable assets. This entity shall accept service of process, either directly or through an agent, and submit to the jurisdiction of California courts.

I swear or affirm that all of the statements and representations made in this Request are true and correct.

_____
Signature and title

_____
Typed or printed name and title

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

Notary Public In and For the State of _____.

My Commission expires: _____

(END OF APPENDIX A)