

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

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

Rulemaking 20-09-001
(Filed August 6, 2021)

**OPENING COMMENTS OF THE CALIFORNIA STATE ASSOCIATION OF
COUNTIES ON THE PROPOSED DECISION ADOPTING FEDERAL FUNDING
ACCOUNT RULES**

March 22, 2022

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The California State Association of Counties (CSAC) respectfully submits these Opening Comments on the Proposed Decision Adopting Federal Funding Account Rules, issued in this Rulemaking (R.) 20-09-001 (Broadband Infrastructure) on March 2, 2022 (Proposed Decision). Attached to the Proposed Decision as Appendix A are the Federal Funding Program Rules and Guidelines (Appendix A). These Opening Comments are timely filed and served pursuant to the Commission’s Rules of Practice and Procedure.

**I.
BACKGROUND ON CSAC**

CSAC is a nonprofit mutual benefit corporation under the California Nonprofit Mutual Benefit Corporation Law. CSAC is a lobbying, advocacy and service organization which represents all 58 counties of the State of California. CSAC is based in Sacramento, California, and is focused on advancing the vital public interest in effective, efficient, and responsive local government. CSAC began meeting in 1895 under the name of the County Supervisors Association of California and began doing business under the name the California State Association of Counties in 1991. CSAC’s long-term objective is to significantly improve the fiscal health of all California counties so they can adequately meet the demand for vital public programs and services.

II. INTRODUCTION

CSAC appreciates the opportunity to provide comments and strongly supports the Commission's efforts to support local governments working to close the digital divide. CSAC provides the following recommendations for rules governing the Federal Funding Account:

1. Because the federal funding must be obligated expediently or be lost, the Commission must distribute funds as quickly as it can responsibly do so while minimizing barriers to expedient use of the funds by applicants.
2. Because the need for broadband is widespread and based on diverse circumstances, the Commission must make rules that balance funding for projects that serve many households at low cost with those that serve households that are the least served currently, least likely to be served without infrastructure subsidies, and for which infrastructure will take the longest time to reach.
3. Because the communities and households that are still unserved in 2022 can often be identified by their unprofitability, household income, or other demographic factors unrelated to broadband needs, the Commission should prioritize applications from entities—including counties, other local agencies and groups of local agencies, and Tribes—that are accustomed to providing infrastructure and services based on need.
4. Because broadband is a necessity for modern life, the Commission should use the one-time funds in a way that maximizes the long-term public good.

III. CSAC OPENING COMMENTS

CSAC respectfully submits comments on the following questions and issues.

1. Apportionment of Funds

CSAC appreciates the difficult position of the Commission in attempting to comply with the statutory requirement regarding apportionment of funds among rural and urban counties in a way that most closely mirrors their proportionate need for broadband infrastructure. Some of the proposed methods might come closer than others in apportioning the currently available funds proportionate to those needs, but none of them will do so perfectly.¹

While this rulemaking deals with federal funds, legislation passed last year in California has increased and extended California Advanced Services Fund (CASF) collections, making approximately \$1.5 billion of additional funding available to close the Digital Divide over the next decade. This legislation directly affects apportionment of funds in this proceeding and can be used to ensure proportionate benefits based on need. Therefore, CSAC encourages the Commission to recognize the specific counties where the adopted rural/urban formula falls short, and intentionally use the additional funds over the next decade to provide regional equity so that when the aggregate outcome is considered all areas of the state receive a benefit proportionate to their need.

2. Application Evaluation Criteria

CSAC appreciates and supports the decision to award increased points for broadband networks owned by, operated by, or affiliated with counties, other local governments, Tribes, non-profits, and cooperatives.² This acknowledges the public input and transparency of their planning and the public good their investments and operations provide. It also recognizes and helps to address the disadvantage these organizations faced in applying for similar funds previously, including in some cases outright ineligibility.

¹ See, Proposed Decision, at pp. 28-35.

² Proposed Decision, at p. 91 (Finding of Fact Number 13) and Appendix A, at p. A-6.

However, as discussed further below, the functional lack of access to the Ministerial Review process again places applications from these entities on a second tier of funding eligibility. While they can partner with one that holds a Certificate of Public Convenience and Necessity (CPCN), that runs against the Final Rule’s finding that networks owned or operated by local governments, nonprofits, and cooperatives have less pressure to generate profit and are commitment to serving entire communities.

3. Funding of Middle Mile Infrastructure

CSAC appreciates and supports the decision to allow funding for last-mile applications that also propose to include middle-mile infrastructure that is necessary.³ CSAC also supports that the evaluation criteria include whether existing middle mile infrastructure is open access. This will help ensure communities are not functionally blocked from receiving broadband because they are trapped behind a wall of apparently sufficient infrastructure owned by an entity that is in the end unwilling or unable to extend last-mile service.

4. Open Access

CSAC appreciates and supports the decision to require that middle-mile segments built using a Federal Funding Account (FFA) grant must be open access for the lifetime of that infrastructure.⁴ This requirement maximizes the public good provided by these public funds and will complement the statewide middle mile network currently under development.

5. Affordability

CSAC appreciates and supports the decision to require FFA grantees to participate in the federal Affordable Connectivity Program (ACP) or otherwise provide access to a broad-based

³ Proposed Decision, at p. 39 and Appendix A, at pp. A-8 and A-9.

⁴ Proposed Decision, at pp. 50-52 and Appendix A, at p. A-9.

affordability program to low-income consumers.⁵ Access to broadband is meaningless to those who cannot adopt it. The federal affordability program, or its equivalent, is an appropriate requirement for those applying for subsidies provided using federal funds.

6. Ministerial Review

CSAC supports a process of ministerial review, given the urgency of closing the Digital Divide generally and of spending the federal funds specifically.⁶ However, the Proposed Decision is too restrictive in ways that specifically damages the applications led by counties, whether they apply singly or as a group.⁷

As noted above, the lack of access to the Ministerial Review process places applications from counties on a second tier of funding eligibility. These entities can partner with one that holds a CPCN, but that would negate the Final Rule's finding that networks owned or operated by local governments, nonprofits, and cooperatives have less pressure to generate profit and are committed to serving entire communities. Likewise, the alternative of obtaining and retaining a letter of credit over a two-year period will be unnecessarily burdensome.

These requirements put some applicants on the fast track while sticking county applications that are otherwise similarly situated in the slow lane.

Even the smallest counties are large, complex organizations that receive funds from a wide variety of sources and provide a breadth of services to every resident. Counties provide infrastructure solutions as a matter of course, with their own forces and by contract, not to mention health care, community planning, social services, emergency response, water, tax collection, disaster preparedness, and dozens of other services.

⁵ Proposed Decision, at pp. 63-64 and Appendix A, at pp. A-11 and A-12.

⁶ Proposed Decision, at pp. 78-79 and Appendix A, at pp. A-22 and A-23.

⁷ *Id.*

The idea that a single broadband project, decided on through deliberative community input, included in the county's nine- to ten-figure budget, and that meets all the other requirements of the ministerial review process could cause a county to collapse like a house of cards and leave the Commission both out the money it awarded and without any broadband infrastructure to show for it is not credible.

The alternative is not only to endure the Commission's lengthy resolution process but also to compete with all other applications on several criteria never considered in the ministerial review process, such as having matching funds and whether it serves an area designated by Commission Communications Division (CD) staff. If the purpose of favoring applications submitted either by an entity with a CPCN or with a letter of credit is to give extra scrutiny to applications from entities that might plan or budget poorly or have less technical capacity, then the alternative of putting them into a decision system where those criteria are only worth 20 points in the application evaluation process is puzzling.

If the Commission insists on putting applications from counties in a second tier, CSAC requests that the Commission explicitly expedite the resolution process for those applications that otherwise meet all the criteria for ministerial review.

Another likely effect of requiring county and nonprofit applicants to proceed through a lengthy resolution process will be to disincentivize and delay applications for open-access projects, despite the likelihood that these are the projects most aligned with many of the Commission's priorities.

CSAC also supports raising the maximum cost per location. Again, denying speedy approval of otherwise eligible applications for higher-cost locations delays service for households that will already take the longest time to reach. As noted in the California State

Broadband Cost Model, the funding need of for “over threshold” locations of highest need (areas lacking 25/3) is essentially equal to the funding needs for “under threshold” locations (\$1.65 billion to \$1.73 billion). CSAC does not believe the CPUC should prioritize high-cost locations over low-cost locations. However, the reverse should also be avoided. The maximum cost per location, if included at all, should be at least three times higher, if not more.

IV. CONCLUSION

CSAC appreciates the opportunity to submit these Opening Comments on the Proposed Decision.

Respectfully submitted,

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