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Decision 21-10-020 October 21, 2021

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

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

Rulemaking 20-09-001

**DECISION RESOLVING PHASE I OF BROADBAND  
FOR ALL PROCEEDING**

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## **DECISION RESOLVING PHASE I OF BROADBAND FOR ALL PROCEEDING**

### **Summary**

This Decision resolves Phase I of this proceeding, adopting new post-disaster community engagement and reporting requirements for Investor-Owned Utilities and facilities-based telecommunications service providers in California. We also adopt eligibility requirements for the Digital Divide Account created in California Public Utilities Code Section 280.5.

This proceeding remains open.

### **1. Background**

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

#### **1.1 Factual Background**

Communities across California face a multitude of barriers for the deployment of resilient and accessible broadband networks. Broadband Internet access and service in urban communities varies by neighborhood. Rural areas of the state often lack the infrastructure for sufficient wireline and wireless broadband internet access service. The COVID-19 pandemic has highlighted the extent to which broadband access is essential for public safety, public health and welfare, education, and economic resilience, adding greater urgency to developing new strategies and expand on existing successful measures to deploy reliable networks with affordable service. Over 2,000,000 Californians lack access to high-speed broadband Internet service at speeds of 100 Megabytes per second

(Mbps)<sup>1</sup> download, including 50 percent of rural housing units<sup>2</sup> and thirty percent of California Tribal Lands remain unserved.<sup>3</sup>

## **1.2 Procedural Background**

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

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

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

On December 28, 2020, the assigned Commissioner issued a Scoping Memorandum and Ruling (Scoping Memo) that divided this proceeding into three phases. This decision addresses Phase 1.

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<sup>1</sup> Mbps.

<sup>2</sup> See:

<https://public.tableau.com/profile/cpuc#!/vizhome/EOY2018BroadbandAdoptionsbyHousingUnits/Adoption>, available as of this writing, (based on 25/3 speed tier).

<sup>3</sup> See:

<https://public.tableau.com/profile/cpuc#!/vizhome/EOY2018BroadbandDeploymentbyHUTribalLands/Dashboard>, available as of this writing.

On December 30, 2020, the assigned Administrative Law Judge (ALJ) issued a ruling requesting party comment on a Commission Communication Division (CD) staff proposal and questions raised by CD staff.

The following parties filed opening and reply comments:

- Pacific Gas & Electric (PG&E);
- San Diego Gas & Electric (SDG&E);
- Southern California Edison (SCE);
- California Association of Small and Multi-Jurisdictional Utilities (CASMU);<sup>4</sup>
- Corporation for Education Network Initiatives in California (CENIC);
- California Emerging Technology Fund (CETF);
- Next Century Cities (NCC);
- Public Advocates Office (CalPA);
- Rural County Representatives of California (RCRC);
- The Utility Reform Network (TURN);
- Center for Affordable Technology (CfAT);
- Utility Consumers' Action Network (UCAN);
- National Diversity Coalition (NDC);
- Small Business Utilities Advocates (SBUA);
- American Association of Retired Persons (AARP);
- Communications Workers of America (CWA);
- Frederick L. Pilot;
- AT&T California;
- Frontier California & Subsidiaries;

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<sup>4</sup> Bear Valley Electric Service, Inc., Liberty Utilities (CalPeco Electric) LLC, and PacifiCorp, d.b.a. Pacific Power.

- 13 small Local Exchange Carriers commonly called the Small LECs;<sup>5</sup>
- California Cable and Telecommunications Association (CCTA); and
- CTIA – The Wireless Association.

After reviewing the comments and reply comments, on April 20, 2021, the assigned Commissioner issued an Amended Scoping Memo and Ruling modifying the scope of issues for this portion of this proceeding and ordering a supplemental round of comments and reply comments.

The following parties filed supplemental comments or reply comments:

- PG&E;
- SDG&E;
- SCE;
- CASMU;<sup>6</sup>
- CENIC;
- CETF;
- CalPA;
- TURN;
- CfAT;
- UCAN;
- NDC;
- SBUA;

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<sup>5</sup> Kerman Telephone Co., Foresthill Telephone Co., Hornitos Telephone Company, Pinnacles Telephone Co., Volcano Telephone Company, Winterhaven Telephone Company, Happy Valley Telephone Company, Sierra Telephone Company, Inc., The Siskiyou Telephone Company, The Ponderosa Telephone Co., Calaveras Telephone Company, Cal-Ore Telephone Co., Ducor Telephone Company

<sup>6</sup> Bear Valley Electric Service, Inc., Liberty Utilities (CalPeco Electric) LLC, and PacifiCorp, d.b.a. Pacific Power.

- CWA;
- Joint ILECs<sup>7</sup>;
- The Small LECs;
- CCTA; and
- CTIA - The Wireless Association.

## **2. Issues Before the Commission**

The Second Amended Scoping Memo divides this proceeding into 3 phases. This decision resolves Phase 1 of this proceeding, focusing on the issues listed below.

1. What requirements, if any, should the Commission impose on communications service providers and the California energy Investor-Owned Utilities (IOUs) to facilitate the construction of fiber facilities or other technologies capable of providing a minimum download speed of 100 Mbps when restoring facilities after a disaster such as a fire? Should this Commission require both the IOUs and communications providers to coordinate on their construction activities?
2. How should the Commission use the roughly \$1 million in the Digital Divide Account to help schools and students?

Throughout the proceeding, the Commission will also consider the issue of how the digital divide and limited and/or no broadband access impact environmental and social justice communities, including improvements to better achieve any of the nine goals of the Commission's Environmental and Social Justice (ESJ) Action Plan.<sup>8</sup>

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<sup>7</sup> AT&T California, Frontier, and Consolidated jointly filed comments and reply comments for the supplemental round but filed individually during the initial round.

<sup>8</sup> More information on the Commission's ESJ Action Plan available on the Commission's website as of this writing at: <https://www.cpuc.ca.gov/ESJactionplan/>

### **3. Service Restoration Requirements**

The initial Scoping Memo requests parties propose requirements, if any, that the Commission should impose on communications service providers and the IOUs to facilitate the construction of fiber facilities or other technologies capable of providing a minimum download speed of 100 Mbps when restoring facilities after a disaster such as a fire. A December 30, 2020 ruling issued by the assigned ALJ served a staff paper on parties, including a proposed IOU Fiber Pilot Program (Pilot) in which IOUs install fiber optic infrastructure as part of their service restoral and rebuild of communities impacted by the 2020 wildfires and potential 2021 wildfires.

The goal of the Pilot is that, with the restoral of damaged IOU infrastructure following wildfires, the IOU will concurrently install fiber infrastructure and conduit as necessary to facilitate the operation of an open access fiber network in and near the community impacted by a 2020-21 wildfire.<sup>9</sup> By taking advantage of IOU service restoral and rebuilds to install a fiber network, the impacted community can benefit from reliable broadband infrastructure constructed by the IOU that would not be built outside of this opportunity. The network would be designed to provide points of interconnection that could be accessed by a third party, allowing it to serve the community in question. The proposal requires the IOU first to offer to lease the fiber or infrastructure to the local or Tribal government. Only after making that offering, would the IOU be allowed to lease the fiber in a nondiscriminatory manner at just and reasonable rates to a communications provider requesting access.

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<sup>9</sup> The proposal is confined to the 21 wildfires in California designated as Declared Disasters by the Federal Emergency Management Agency in 2020.

Finally, the First Amended Scoping Memo Parties includes a proposal that if a post-disaster utility infrastructure rebuild involves undergrounding and the range of costs or the cost sharing arrangement differs from this Commission's Rule 20 formulas, the IOU must explain the reason for the difference.

### **3.1 Party Positions**

Parties disagree over whether the Commission should require telecommunications service providers and IOUs to facilitate the construction of fiber facilities when restoring electrical facilities after a disaster. Parties also offer a variety of recommendations for other actions the Commission should take instead of implementing this requirement. Most parties either do not support the proposed Pilot or recommend significant changes to it.

Many of the IOUs, as well as the telecommunications service providers, assert the proposed construction requirements are unnecessary, as most service restoration work is complete or will be near completion by Spring 2021.<sup>10</sup> These parties argue that implementing that requirement would mean new and duplicative work in areas where construction activities have already been complete. The same parties also express concern that the rebuild requirement is too burdensome.

The IOUs, CASMU, and CWA argue that telecommunications service providers should be responsible for offering Internet service, not electrical utilities, given the electric utilities lack experience providing Internet service. CASMU adds that electric utilities should not be compelled to install fiber if not

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<sup>10</sup> PG&E states that it has completed all engineering work for the electric restoration in the 2020 wildfire areas in its service territory, along with 68 percent of the construction work. SCE reports that its 2020 wildfire restoration efforts have been completed. SDG&E states that of the 21 areas identified in the Staff Proposal, only the Valley Fire was located within SDG&E's service territory and the electric facilities impacted by the fire have almost completely been rebuilt and re-energized.

required for utility operation. CASMU also asserts that electric utilities have little capacity or legal power to install fiber for communications purposes and the Commission has no jurisdiction to force IOUs into the Internet Service Provider (ISP) market and should instead focus its Internet service expansion efforts on ISPs. If forced, CASMU members are willing to work with ISPs.

Most telecommunications service providers oppose the Commission requiring them to construct fiber and other fiber facilities when restoring facilities damaged or destroyed by a disaster. Several telecommunications service providers, as well as associations representing those providers, assert that mandating the construction or installation of specific technologies, such as fiber, will lead to delays in service restoral, or diminish capacity, could lead to overbuilding of existing telecommunications facilities, and also question if the fiber will even be used and useful.

Many parties either oppose the Pilot or recommend significant changes. AT&T, Frontier and the Small LECs recommend that the Pilot be voluntary, with CASMU requesting to be excluded from the Pilot. CTIA asserts the Pilot would violate competitive neutrality laws in California Public Utilities(Cal. Pub. Util.) Code Sections 253 (a) and 709.5. CWA is concerned that requiring fiber installation or the construction of fiber facilities in disaster recovery areas will lead to fiber islands. Instead, telecommunications providers argue that the Commission should only require space be available for installation.

Several parties, including CCTA, TURN, and Cal Advocates suggest a more focused pilot on a small number of communities, such as areas where the telecommunications infrastructure has not been rebuilt. CTIA asks the Commission to guarantee the Pilot would not disrupt wireless service. CWA is concerned the Pilot would overturn the current joint pole framework with no

obligations in place for maintenance and interconnection. CASMU asserts the Pilot does not recognize the limits placed by easement rules and that there is no precedent for the Pilot.

How to pay for the Pilot is another area of disagreement. The IOUs note the need for an identified cost-recovery mechanism to avoid cross-subsidization of ratepayer funds. CTIA opposes allowing IOU cost recovery in their general rate cases but also expresses concerns that costs are unlikely to be recouped. AT&T adds that the costs of deploying and operating the required fiber should be accounted for on a fully distributed cost basis and if any use of these fiber facilities is made by the IOU or by a commercial entity, the entire fully distributed cost of the fiber facilities should be removed from the utility rate base and regulated operating expenses, and if any use of these fiber facilities is made for non-utility purposes, it should be via a separate subsidiary of the IOU, with separate books of account and responsibility for any shortfalls.

Several parties, including Cal Advocates, CWA, and TURN, recommend the Commission instead focus on network and infrastructure hardening requirements, including the installation of better utility poles, as well as focusing on "Dig Once" policies. CCTA recommends the Commission focus on expediting pole attachments.

AT&T and CCTA oppose local and Tribal governments receiving access to IOU fiber, as well as the IOUs receiving priority over telecommunications service providers in the installation of fiber or other wireline infrastructure. AT&T asserts if an IOU leases its fiber facilities to a local or Tribal government, a carrier of last resort (COLR) in a disaster area should be relieved of any responsibility to rebuild its network and may discontinue service in the impacted area.

Finally, parties do not agree about the proposal that, if a post-disaster utility infrastructure rebuild involves undergrounding and the range of costs or the cost sharing arrangement differs from this Commission's Rule 20 formulas, the IOU must explain the reason for the difference. AARP, Comcast, NDC, SBUA, UCAN all support the proposal. Comcast is interested in receiving cost recovery in instances of undergrounding after disasters for their bearing of the costs. SCE intends to use its CMA account to recover costs for its disaster-related rebuilds.

Small LECs oppose the proposal. These companies assert they do not have the resources to absorb costs and imposing cost recovery limits without significant benefits cannot be justified.

NDC requests restoration plans preemptively justify any deviations from standard ranges of costs or cost sharing under Rule 20, and that references for costs to be incurred should be provided and explained to avoid the appearance of price-gouging.

PG&E explains what goes into costs for trenching and cost-sharing and that costs may go up if the potential co-trenching partner prefers to instead do their own separate trench or rebuild overhead.

### **3.2 Discussion**

While we decline at this time to require IOUs to install fiber while undertaking their service restoration efforts after a disaster, we nonetheless want to find ways to encourage IOUs to install fiber or conduit voluntarily. We do not authorize the inclusion of these costs into rates at this time; however, we will continue to explore other opportunities for the IOUs, including the Federal Funding Account created by Senate Bill (SB) 156, the rules for which will be

developed in Phase III of this proceeding. We encourage the voluntary installation of fiber/conduit during restoration and rebuilding.

In Phase II-A of this proceeding, we are continuing to investigate ways to leverage existing IOU fiber, as well as future fiber builds, and wildfire hardening work, to assist in serving unserved and underserved communities. Thus, we want to clarify that our choice in this decision not to require fiber and/or conduit installation when rebuilding should not be viewed as agreeing with many of the other arguments against the construction requirement and the Pilot. We are not persuaded by arguments that leveraging IOU fiber to serve unserved communities somehow violates statute or is anticompetitive. Further, we will continue to explore options that include local and tribal governments.

#### **4. Service Restoration Engagement Requirements**

The First Amended Scoping Memo ordered a supplemental round of comments and reply comments on a proposal that the Commission require the IOUs and telecommunications service providers for each community impacted by a disaster to file an advice letter detailing the impact of the disaster on their facilities, and to include service restoration plans, no later than 15 days after the disaster. The proposal also includes that the Commission require IOUs and communications providers to meet and confer prior to filing their advice letter. Further, if the proposed rebuild involves undergrounding and the range of costs or the cost sharing arrangement differs from this Commission's Rule 20 formulas, the IOU must explain the reason for the difference. Finally, the First Amended Scoping Memo proposes that the Commission require both the IOUs and communications providers communicate with the impacted community via the local or tribal government representatives such as city and county officials,

the Regional Broadband Consortium, or other interested stakeholders on rebuild status, plans and timelines, and seeks comment on the specifics.

#### **4.1 Party Positions**

Parties disagree on whether the Commission should adopt the community engagement proposal issued in the First Amended Scoping Memo.

The AARP asserts that requiring electric utilities and telecommunications service providers to meet and confer among each other, as well as with local and Tribal governments and other community organizations, could lead to the efficient deployment of post-disaster services. TURN supports encouraging these types of communications and recommends requiring a second advice letter detailing the progress.

NDC generally approves of the proposed requirements, asserting this type of coordination will help IOUs and ISPs assess what locations and services to prioritize. SBUA asserts that plans should be clear and communicated with the public affected by disasters, as many in these circumstances don't have access to the Internet or smart phones, thus telephone and television access can be instrumental to informing locals during these times of trouble.

TURN supports the Commission facilitating disaster coordination with IOUs and telecommunications service providers to lay the groundwork for their post disaster cooperation with local communities in disaster prone areas, arguing that feedback from stakeholders might be broader than the recovery process and allow for lessons learned and needs assessments going forward. CforAT asserts the meet and confer requirements also could be useful in planning fiber buildouts, as this sort of instruction is novel and allows for more efficient models for building out fiber networks and network planning, encouraging deployment in unserved areas.

CASMU, Charter, Cox, Comcast, CTIA, the Joint ILECs and the Small LECs all oppose the proposed meet and confer requirements. Charter, Comcast, Cox, CCTA, and CTIA assert the requirements are unnecessary, as IOUs and telecommunications service providers already meet and confer on service restoral efforts, adding that if the meet and confer requirements are adopted, the Commission should allow for the written communications to count as meeting the requirement. The Small LECs assert that companies should be focused on restoration, not reporting, and that existing reporting requests are sufficient. Joint ILECs, CASMU, CTIA and CCTA assert the community engagement requirements will lead to service restoral delays, though CETF and SBUA assert the opposite, arguing instead that coordination with community organizations and local stakeholders can make restoral quicker.

Joint ILECs, CTIA, and Comcast argue that the Commission lacks jurisdiction to issue these rules and is also preempted by the Federal Communications Commission (FCC). CforAT, Cal Advocates, and TURN dispute these claims, asserting this Commission is responsible for ensuring that telecommunications networks and services are sufficiently supported for public safety.

SDG&E and SCE assert that the proposal overlaps with existing Commission rules - including General Order (GO) 166, GO 95, and Rule 12.5 of the Commission's Rules of Practice and Procedure<sup>11</sup> - and does not add value to post-emergency restoration efforts, and would even cause service restoral delays, predicting that additional delays to restore service if telecommunications providers request rights to access their facilities and equipment on IOU

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<sup>11</sup> Hereinafter referred to as Rule(s).

infrastructure. Instead, SDG&E asserts that telecommunications providers should be coordinating on utility fire hardening efforts as identified in already required Wildfire Management Plans.

Cal Advocates and SCE assert that rules should not be duplicative of work in other Commission proceedings. Cal Advocates also asserts the Commission should require timely restoration of services and require telecommunications service providers to rebuild improved infrastructure, when feasible.

Several parties recommend revisions to the proposal. CASMU and Joint ILECs note that the proposed rules do not specify when specific communication activities must occur or to what extent the IOUs need to incorporate feedback.

CETF, PG&E, and SCE support defining a disaster as a "major outage" as defined in GO 166. PG&E asserts that using the term "service restoration plans" may lead to conflict as typical restoration is restoring previous service as soon as possible, while a rebuild implies using new infrastructure, given that facilities and housing and other infrastructure have been destroyed. Restoration generally begins as soon as first responders allow access to the area in question. Thus PG&E argues that service restoration plans should refer to rebuild activities where the replacement of utility structures in disaster areas have destroyed end user property. Comcast asserts the definition of disaster needs to be clarified, so that the rules only apply to significant disasters, and limited to those named disasters by the Governor and President of the United States that cause network outages.

CforAT requests the Commission ensure outreach is in all languages within the communities and that the most vulnerable are reached out to, especially if they rely on medical equipment to survive.

The Joint ILECs argue that a 15-day period is far too short, and that it could lead to company employees entering unsafe areas before they are cleared. The Small LECs argue the proposed requirement would impose undue compliance costs without providing meaningful benefits. Comcast and CCTA recommend extending the deadline to 30 days. PG&E and SCE support extending the deadline to file an Advice Letter to at least 60 days. CWA asserts telecommunications service providers rarely meet their responsibilities to ensure their networks are reliable and secure, so the Commission instead should require these companies to submit plans in advance of disasters and include redundant systems in case of disaster. SCE argues that any requirement should allow for 'good faith efforts' and that any meet-and-confer be in a way that does not disrupt restoral efforts.

Comcast, CENIC, and CCTA request several clarifications, including when the clock for 15 days begins. CCTA also asserts that the Advice Letters should be limited to information regarding the impact of disaster on providers' facilities and service restoration status.

TURN and NDC note that service restoration may include temporary facilities or repairs, not final plans for rebuilding damaged infrastructure, asserts that the Commission will need to incorporate both short-term and longer-term efforts in the proposed Advice Letter process. CforAT recommends the Commission require three Advice Letters: an initial Tier 2 filing within 15 days of the disaster; a Tier 2 Advice Letter filed no later than 60 days after the disaster detailing providers' communication and collaboration with affected communities; and a final Tier 1 Advice Letter updating that same information once providers have completed service restoration.

## 4.2 Discussion

We adopt the community engagement and Advice Letter filing requirements, with modifications.

We dismiss the extremely broad claims made by the large ILECs, cable providers and CTIA that this Commission does not have the authority to adopt these rules. The OIR discusses our authority in detail. Further, the Commission has addressed these claims in other decisions, notably in Decision (D.) 20-07-011<sup>12</sup> and D.21-02-029,<sup>13</sup> which discuss our jurisdiction over wireless and wireline facilities, including interconnected voice over internet protocol (VoIP) carriers. While there are specific actions state commissions cannot take, such as licensing spectrum, state commissions are not preempted from adopting these types of rules.

Further, we are not persuaded by objections that community engagement and Advice Letter requirements will divert critical resources from the restoration efforts, as these claims are unsupported. These arguments contradict other statements made by the same providers that they already are performing these tasks.

We also are not persuaded by arguments that existing post-disaster reporting requirements are sufficient. The Commission has received enough formal and informal complaints to suggest this is not the case. Comments in the record from several types of consumer groups further support this point. Finally, the comments filed by many of the IOUs and telecommunications service

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<sup>12</sup> Decision Adopting Wireless Provider Resiliency Strategies, at 13-33 (holding that the resiliency and backup power requirements adopted by the decision were not preempted by 47 USC § 332(c)(a)).

<sup>13</sup> Decision Adopting Wireline Provider Resiliency Strategies, at 6-15 (confirming that VoIP providers are telephone corporations pursuant to Pub. Util. Code § 234).

providers suggest that these companies view having to discuss service restoration and rebuild efforts with the communities they serve as an inconvenience. If that is the case, we encourage them to adopt a more appropriate view of the people they serve.

The first requirement we adopt is that, in the event of a disaster declared either by the Governor of California or the President of the United States, IOUs and facilities-based telecommunications service providers shall each file a Tier 1 Advice Letter within 15 business days from when they are allowed into an affected area to assess the damage to their facilities.

The 15-day Tier 1 Advice Letter is informational only, but at a minimum should include the following details: 1) a report of what facilities or equipment was damaged, which may include any reports filed with public safety agencies showing containment or percentage of containment; 2) restoration and/or rebuild plans, including a description of what is being repaired, replaced or added, and maps of where the restoration will occur; 3) the date the IOUs and/or telecommunications service provider received access to the damaged area; 4) the timeline to make repairs; 5) any changes to any energy/communication infrastructure required; and 6) the contact information of the individual responsible for community engagement in these instances. IOUs shall file this Advice Letter with the Commission's Energy Division with a copy sent to the Communication Division. Facilities-based telecommunications service providers shall file the Advice Letter with the Communications Division. In addition, both IOUs and the facilities-based telecommunications service providers shall provide a courtesy copy of the Advice Letter to the appropriate local governments contained within the disaster area. In the case of a city, township or Tribal government, this means the executive or leader in charge of that entity. In the

case of an unincorporated area, the communication must be established with the appropriate County.

The second requirement we adopt is that within 30 days of being permitted back into the disaster area, IOUs and facilities-based telecommunications service providers shall meet in person with the impacted community to allow an opportunity to discuss any rebuilding plans that may affect them, especially if there are plans for fiber build outs. The utilities will consider incorporating any comments made by the affected community while working on their restoration.

The third requirement we adopt is that within 60 days after service is restored and all rebuilding work is complete, IOUs and facilities-based telecommunications service providers shall file a Tier 2 Advice Letter. The Tier 2 Advice Letter shall be filed with and otherwise provided to the same individuals and entities as required by the initial Tier 1 Advice Letter. This Tier 2 Advice Letter shall include: 1) a summary of restoration and/or rebuild activities; 2) a summary of the meetings and other communications that took place; 3) a summary of any changes made after the meet and confer meeting(s); 4) a summary of any energy/communication infrastructure added or changed, as well as the location, including a map; and 5) other issues the caused delays, such as land rights, permits, or discussions with certain entities.

The Advice Letter filing requirements we adopt here will provide impacted communities with more information and allow them the opportunity to share their concerns with IOUs and telecommunications service providers and do so without significant delay.

## **5. Digital Divide Account**

Pub. Util. Code Section 280.5 requires the Commission to provide grants on a competitive basis subject to criteria to be established by the Commission and in a way that disburses the funds widely, including urban and rural areas. The original Scoping Memo asks parties to comment on how the Commission should use the roughly \$1 million in the Digital Divide Account to help schools and students. The amended Scoping Memo ordered a supplemental round of comments and reply comments on a staff proposed pilot program to focus the \$1 million in limited grant funds available on a small number of schools, with the following eligibility criteria:

- Grants are limited to serving rural low-income small school districts;
- The beneficiary school must be in a small rural school district, as identified by the California Department of Education;
- The beneficiary school must have a free lunch participation rate of at least 25 percent or greater;
- The grant recipient must be a Community Based Organization (CBO) 501c3 non-profit with a demonstrated record of work to address the digital divide;
- CBO administrative expenses are limited to no more than five percent of the grant amount;
- Grants must provide a holistic solution including, but not limited, to:
  - Student home broadband connection;
  - Student required hardware including laptop, Chromebook and/or hotspots;
  - Student curriculum focused on the use of technology;
  - Software to enable distance learning for student and teacher; and

- Training for teachers in the use of technology for distance learning;
- The term of the project is limited to one school year;
- Ongoing subsidies for CTF eligible services may be available for the participating school and student; and
- Grant amounts do not exceed \$250,000 per pilot project.

### **5.1 Party Positions**

In general, most parties filing comments support the proposed criteria, though most also assert the Commission should broaden eligible grantees to beyond just rural, low-income small school districts. Some parties also support increasing the limit on administrative expenses to more than the proposed five percent. Parties also propose other modifications.

AARP, Joint ILECs, NDC, UCAN, CETF, CENIC, CWA, and CforAT all argue that urban schools also should benefit from the Digital Divide Account grant program, because students in urban areas are affected in pockets by the same broadband access problems as students in rural areas. Further, these parties argue that excluding urban schools would not comply with the requirement in statute to disburse the funds widely. TURN asserts using increasing the free lunch participation rate from at least 25 percent to at least 50 percent would focus spending on schools with the neediest students. CETF asks the Commission to define the term “rural low-income small school district.”

Several parties suggest additions or other changes to the criteria. CforAT asks the Commission to clarify that one year for the program means one calendar year. Small LECs suggest that the Commission require applicants submit a detailed budget. CTIA encourages the Commission to award grants on a competitive basis and in a technologically neutral manner to allow the inclusion of mobile broadband service.

CETF supports other specific requirements it asserts will lead to more holistic solutions, including: 1) asking the Commission's Communication Division staff to determine which communities have adequate service; 2) expanding eligibility to libraries; and 3) requiring grantees to count users.

NDC and the Small LECs recommend that the Commission clarify that the list of activities to be funded "holistic solutions" are the types of activities the program may allow, and not a requirement to offer every solution. Additionally, NDC recommends that the Commission broaden its view of fundable training activities to beyond just training on specific hardware. UCAN recommends the Commission not use these funds towards training teachers, that the training instead be for parents and households.

CETF and UCAN urge the Commission to require matching funds. NDC, UNCAN and CETF support increasing the cap on administrative expenses, with UCAN proposing a percent in the range of ten to fifteen percent and CETF proposing eight to twelve percent.

## **5.2 Discussion**

We adopt the proposed requirements for the Digital Divide Account with some modifications.

The enabling statute directs Digital Divide Account funds be available for both rural and urban areas, thus we modify the proposal to include urban schools. Following the definitions used by the California Department of Education, we intend to award three projects for small, rural schools and one project for urban because small rural districts are at the greatest disadvantage when it comes to obtaining funding. We also revise the criteria to increase the free lunch participation rate from at least 25 percent to at least 50 percent, to allow increase the focus on benefiting schools in low-income communities.

For clarification purposes, we note that the rules we adopt allow for the funding of grants that “provide a holistic solution” but that the examples provided do not include all possible activities.

Finally, we adopt a 10 percent cap on administrative expenses associated with this grant. As some parties note, Pub. Util. Code Section 280.5(b), which mandates that "Not more than 5 percent of the revenues... be used to pay the costs incurred in connection with the administration of digital divide pilot projects..." appears to limit this Commission’s administrative expenses, not the administrative expenses this Commission imposes on grantees.

## **6. Comments on Proposed Decision**

The proposed decision of Commissioner Guzman Aceves in this matter was mailed to the parties in accordance with Section 311 of the Pub. Util. Code. Comments allowed under Rule 14.3 of the Commission’s Rules of Practice and Procedure were filed on October 6, 2021 by:

- PG&E;
- The Small LECs;
- The Yurok Tribe;
- UCAN;
- CTIA;
- Verizon;
- AT&T California;
- NDC;
- SCE; and
- SBUA.

On October 11, 2021, the following parties filed reply comments:

- NDC;
- CETF;
- SCE;
- Frontier Communications;
- TURN;
- The Small LECs;
- CCTA;
- AT&T California;
- CTIA;
- CforAT; and
- SBUA.

In response to comments, we make the following revisions:

- The deadline in Ordering Paragraph 1 is revised from 15 days to 15 business days;
- Ordering Paragraph 7(e) and page 23 are revised to increase the cap on administrative expenses from 5 percent to 10 percent.
- Ordering Paragraphs 1,2, 4 and 5 are revised to clarify that Tribal governments includes any Tribe(s) that have Tribal lands or ancestral territory overlapping with any portion of the disaster area; and
- Ordering Paragraph 7(h) is revised to remove the words “and student.”

## **7. Assignment of Proceeding**

Martha Guzman Aceves is the Assigned Commissioner and Thomas J. Glegola is the assigned ALJ in this proceeding.

## **Findings of Fact**

1. The Commission has received formal and informal complaints, as well as comments provided on the record from several types of consumer groups,

indicating that current post-disaster community engagement efforts by Investor-Owned Utilities and both facilities-based wireline and facilities-based wireless providers are not sufficient.

2. Claims that the community engagement and Advice Letter requirements we adopt will divert critical resources from post-disaster service restoration efforts are unsupported by the record.

### **Conclusions of Law**

1. The Commission has the authority to require IOUs and facilities-based telecommunications providers to file Advice Letters.

2. The Advice Letter filing requirements we adopt here will provide disaster-impacted communities with more information and allow them the opportunity to provide input to IOUs and both facilities-based wireline and facilities-based wireless providers without significant delay and should be approved.

3. Pub. Util. Code Section 280.5 requires the Commission to provide grants on a competitive basis subject to criteria to be established by the Commission and in a way that disburses the funds widely, including urban and rural areas.

## **O R D E R**

### **IT IS ORDERED** that:

1. In the event of a disaster, declared either by the Governor of California or the President of the United States, that also damages their facilities or leads to a service outage, Investor-Owned Utilities (IOUs) shall file a Tier 1 Advice Letter within 15 business days from when they are allowed into a disaster area to assess the damage to their facilities. IOUs shall file this Advice Letter with the Commission's Energy Division, with a copy sent to the Communications Division at [TD.PAL@cpuc.ca.gov](mailto:TD.PAL@cpuc.ca.gov). The Advice Letter also must be provided to the appropriate local government contained within the disaster area, including

the chief executive or leader of the city, township or Tribal government. In the case of an unincorporated area, the communication must be established with the appropriate County. In the case of Tribal governments, the Advice Letter must be provided to any Tribe(s) that have Tribal lands or ancestral territory overlapping with any portion of the disaster area. The Advice Letter shall include the following details:

- a. a report of what facilities or equipment was damaged;
- b. restoration and/or rebuild plans, including a description of what is being repaired, replaced or added, and maps of where the restoration will occur;
- c. the date the investor-owned utility received access to the damaged area;
- d. the timeline to make repairs;
- e. any changes to any energy/communication infrastructure required; and
- f. the contact information of the individual responsible for community engagement in these instances.

2. Within 30 days of being permitted back into a disaster area discussed in Ordering Paragraph 1, the Investor-Owned Utility shall meet in person with the impacted community to allow an opportunity to discuss any rebuilding plans and consider incorporating any comments made by the affected community while working on their restoration. The meeting must be with the appropriate local government contained within the disaster area, including the chief executive or leader of the city, township or Tribal government, or their designee. In the case of an unincorporated area, the communication must be established with the appropriate County. In the case of Tribal governments, the meeting(s) must be with any Tribe(s) that have Tribal lands or ancestral territory overlapping with any portion of the disaster area.

3. Within 60 days after service is restored and all restoration or rebuilding work is complete following a disaster as identified in Ordering Paragraphs 1 and 2, an Investor-Owned Utility shall file a Tier 2 Advice Letter. The Tier 2 Advice Letter shall be filed with Commission's Energy Division, with a copy sent to the Communications Division at [TD.PAL@cpuc.ca.gov](mailto:TD.PAL@cpuc.ca.gov), and also provided to the same individuals and entities as required by the initial Tier 1 Advice Letter.

This Tier 2 Advice Letter shall include:

- a. a summary of restoration and/or rebuild activities;
- b. a summary of the meetings and other communications that took place;
- c. a summary of any changes made after the meet and confer meeting(s);
- d. a summary of any energy/communication infrastructure added or changed, as well as the location, including a map; and
- e. other issues that caused delays, such as land rights, permits, or discussions with certain entities.

4. In the event of a disaster, declared either by the Governor of California or the President of the United States, that also damages their facilities or leads to a service outage, facilities-based wireline and facilities-based wireless providers shall file a Tier 1 Advice Letter within 15 days from when they are allowed into a disaster area to assess the damage to their facilities. This Advice Letter shall be filed with the Commission's Communications Division at [TD.PAL@cpuc.ca.gov](mailto:TD.PAL@cpuc.ca.gov). The Advice Letter also must be provided to the appropriate local government contained within the disaster area, including the chief executive or leader of the city, township or Tribal government. In the case of an unincorporated area, the communication must be established with the appropriate County. In the case of Tribal governments, the communication must be established with any Tribe(s)

that have Tribal lands or ancestral territory overlapping with any portion of the disaster area. The Advice Letter shall include the following details:

- a. a report of what facilities or equipment was damaged;
- b. restoration and/or rebuild plans, including a description of what is being repaired, replaced or added, and maps of where the restoration will occur;
- c. the date the facilities-based wireline or wireless provider received access to the damaged area;
- d. the timeline to make repairs; and
- e. any changes to any energy/communication infrastructure required; and
- f. the contact information of the individual responsible for community engagement in these instances.

5. Within 30 days of being permitted back into a disaster area discussed in Ordering Paragraph 4, the facilities-based wireless or wireline provider shall meet in person with the impacted community to allow an opportunity to discuss any rebuilding plans and consider incorporating any comments made by the affected community while working on their restoration. The meeting should be with the appropriate local government contained within the disaster area, including the chief executive or leader of the city, township or Tribal government, or their designee. In the case of an unincorporated area, the communication must be established with the appropriate County. In the case of Tribal governments, the meeting(s) must be with any tribe(s) that have Tribal lands or ancestral territory overlapping with any portion of the disaster area.

6. Within 60 days after service is restored and all restoration or rebuilding work is complete following a disaster discussed in Ordering Paragraphs 4 and 5, the facilities-based wireline or wireless provider shall file a Tier 2 Advice Letter. The Tier 2 Advice Letter shall be filed with Commission's Communications

Division at [TD. PAL@cpuc.ca.gov](mailto:TD.PAL@cpuc.ca.gov), and also provided to the same individuals and entities as required by the initial Tier 1 Advice Letter. This Tier 2 Advice Letter shall include:

- a. a summary of restoration and/or rebuild activities;
- b. a summary of the meetings and other communications that took place;
- c. a summary of any changes made after the meet and confer meeting(s);
- d. a summary of any energy/communication infrastructure added or changed, as well as the location, including a map; and
- e. other issues that caused delays, such as land rights, permits, or discussions with certain entities.

7. The Commission hereby authorizes eligible grantees to apply for Digital Divide Account grants pursuant to Pub. Util. Code Section 280.5 and the conditions set out in this ordering paragraph.

- a. Grants are limited to serving urban and rural low-income small school districts;
- b. The beneficiary school must be in an urban or small rural school district, as identified by the California Department of Education;
- c. The beneficiary school must have a free lunch participation rate of at least 50 percent;
- d. The grant recipient must be a Community Based Organization non-profit with a demonstrated record of work to address the digital divide;
- e. CBO administrative expenses are limited to no more than 10 percent of the grant amount;

- f. Grants must provide a holistic solution including, but not limited, to:
    - i. Student home broadband connection;
    - ii. Student required hardware including laptop, Chromebook and/or hotspots;
    - iii. Student curriculum focused on the use of technology;
    - iv. Software to enable distance learning for student and teacher; and
    - v. Training for teachers in the use of technology for distance learning;
  - g. The term of the project is limited to one school year;
  - h. Ongoing subsidies for the Commission's California Teleconnect Fund eligible services may be available for the participating school; and
  - i. Grants shall not exceed \$250,000 per pilot project.
8. The Commission delegates to Communications Division staff the authority to approve grants from the Digital Divide Account that meet the criteria set forth in Ordering Paragraph 7.
9. Rulemaking 20-09-001 remains open.

This order is effective today.

Dated October 21, 2021, at San Francisco, California.

MARYBEL BATJER  
President  
MARTHA GUZMAN ACEVES  
CLIFFORD RECHTSCHAFFEN  
GENEVIEVE SHIROMA  
DARCIE HOUCK

Commissioners