BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding Revisions to the California Advanced Services Fund	Rulemaking 20-08-021 (Filed August 27, 2020)

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

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I. Introduction

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

II. Comments

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

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

Structure of Loan Loss Reserve and Other Credit Enhancement Mechanisms

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

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

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

Public Utilities Code section 281.2 authorizes the Commission to make BLLRF program funding available to local government agencies and nonprofit organizations. And, although nonprofit organizations may provide broadband services (within the specified regulatory structure), they will generally require the participation of a public entity as the conduit issuer for any BLLRF supported tax-exempt debt. Senate Bill 156 (Chapter 112, Statutes of 2021) specifically provided that a Joint Powers entity, commonly known as a Joint Powers Authority (JPA), may issue revenue bonds for the deployment of broadband infrastructure by a nonprofit organization that are supported in whole or in part by the BLLRF, but does not authorize a nonprofit to directly issue such bonds[4]. By contrast, local governments have the long-standing authority to issue tax-exempt bonds[5]. Additionally, local governments provide greater financial security as they are established entities that are directly accountable to the communities and residents they serve. Therefore, most debt issuance utilizing BLLRF funding will be by local governments or through partnerships with local governments. Commission rules and requirements should reflect the demonstrated competency, dependability and financial resiliency of local governments that are responsible for providing reliable infrastructure and services to nearly 40 million Californians.

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[2] Public Utilities Code section 281.2(a)

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

[4] Government Code section 6547.7

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

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

Statutory changes made in SB 156 not only created the BLLRF program, aimed at local government financing of broadband infrastructure, but also established the Local Agency Technical Assistance (LATA) grant program specifically to assist local governments in preparing for broadband deployment and applying for infrastructure funding. Further, changes made to the California Advanced Services Fund (CASF) program through this legislation removed barriers to local government eligibility for funding through the CASF Broadband Infrastructure Account. With the enactment of SB 156 and associated legislation[6], the legislature and governor created clear policy that fiber-based, open-access municipal broadband is a preferable alternative to the for-profit broadband infrastructure projects the state has historically subsidized. Additionally, the Commission has emphasized local jurisdiction coordination and a preference for local government involvement in broadband deployment in their respective jurisdictions. In the Commission's Federal Funding Account (FFA) Proposed Decision it provides preference for partnerships that include local governments[7] and encourages partnership between various organizations[8]. Further the LATA program rules require that overlapping local jurisdictions seeking funding submit letters describing the coordination that occurred between the jurisdictions to prevent duplication of effort[9]. The BLLRF will provide a loan loss reserve account for a program of work over an extended period of time, inherently creating an increased risk for duplication of effort if coordination and transparency are not integral to the process. Therefore, the Commission should require non-local agency applicants for BLLRF funding to submit a letter of support from the relevant political subdivision to ensure, not only the efficient use of funding, but also coordination with the local land use authority and community needs.

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

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

[6] SB 4 (Chapter 671, Statutes of 2021) and AB 14 (Chapter 658, Statutes of 2021)
[7] R. 20-09-001, Proposed Decision, March 2, 2022, Page A-6
[8] R. 20-09-001, Proposed Decision, March 2, 2022, Page 46
[9] D. 22-02-026, Attachment 1

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

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

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

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

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

[10] 281.2(a)(1)

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

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

[11] This approach is further detailed in Exhibit "A."

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

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

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

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

Applicant and Project Eligibility Requirements

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[14] See, e.g., D.21-01-003.

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

Reporting Requirements

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

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

Accountability under the proposed "program of work" approach set forth in these comments would be further strengthened through comprehensive reporting requirements. Consistent with Section 281.2(d), BLLRF recipients should be required to submit biannual progress reports and completion reports for each item of broadband infrastructure financed using BLLRF funds. These reporting requirements should be largely similar to the "Semi-Annual and Completion Reporting" requirements set forth in the Revised CASF Program Guidelines, March 2021.[15]

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

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

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

[15] D.21-03-006, Appendix A.

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

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

Financing

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

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

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

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

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

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

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

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

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

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

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

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

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

III. Conclusion

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

Dated: April 1, 2022

Respectfully submitted,

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[16] See Section 281.2(c)

Exhibit A

Rural County Representatives of California
Broadband Loan Loss Reserve Fund Whitepaper

Background

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

Proposal

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Accountability under the proposed program of work approach would be further strengthened through comprehensive reporting requirements. Consistent with Section 281.2(d), BLLRF recipients would be required to submit biannual progress reports and completion reports for each item of broadband infrastructure financed using BLLRF funds. It is proposed that this reporting be largely similar to the "Semi-Annual and Completion Reporting" requirements set forth in the Revised California Advanced Services Funds (CASF) Program Guidelines, March 2021.[6]

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

[6] D.21-03-006, Appendix A.

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

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

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

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

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

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

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

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

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

[7] See Section 281.2(c), and below.

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

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

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

[9] See, e.g., D.21-01-003.