

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

Order Instituting Rulemaking to Consider
Modifications to the California Advanced
Services Fund

R. 12-10-012

**REPLY COMMENTS OF THE LOCAL SELF-RELIANCE ON THE ORDER
INSTITUTING RULE MAKING**

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To the Commission:

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I. INTRODUCTION

The Institute for Local Self-Reliance (ILSR) hereby submits reply comments on the Order Instituting Rulemaking to Consider Modification to the California Advanced Services Fund. ILSR is a nonprofit organization founded in 1974 to provide innovative strategies, working models, and timely information to support environmentally sound and equitable community development.

**II. ILSR SUPPORTS EXPANDING ELIGIBILITY REQUIREMENTS FOR
APPLICANTS OF CASF FUNDS**

ILSR has many years of experience working with municipalities and other community-based broadband network deployers and would like to offer responses to specific concerns raised by

comments to the OIR. ILSR is strongly supportive of telecommunications networks that are financially sustainable and structurally accountable to the communities served by them. Our comments primarily address the concerns raised by other commenters with regard to local governments and cooperatives.

ILSR Does Not Share DRA Fear of Unfinished Projects, Unaffordability, or Insufficient Speeds

ILSR shares the Division of Ratepayer Advocates' concern that CASF grants should be used to fund good smart projects that will provide fast, affordable, and reliable access to everyone in the targeted territory. However, ILSR finds no reason to believe that presently ineligible entities, such as local governments and cooperatives, would be unable to meet that requirement. We address each of DRA's listed concerns separately.¹

High Capacity Connections and Speeds

There are only five cities in America where every home has immediate access to a 1 Gbps connection (now made famous by the network Google is starting to build in Kansas City). The first city to have such a network was Chattanooga, Tennessee.² Chattanooga's network is owned and operated by the City itself. The same is true of Bristol, Va; Bristol, Tenn.; Morristown, Tenn.; and Lafayette, La. In addition to making a gigabit available universally, Lafayette was the first network to offer all in-network connections at the full capacity of the network. This means that regardless of what Internet speed a subscriber has, that subscriber will connect to others on the local network at speeds regularly approaching 100Mbps.³

In many states, the fastest connections have been provided by municipal networks because they have invested in Fiber-to-the-Home (FTTH) networks. Though costly, the choice makes sense to

¹ See Comments of the Division of Ratepayer Advocates on the Order Instituting Rulemaking to Consider Modifications to the California Advanced Services Fund, "There are many risks in giving entities that do not hold a CPCN or WIR millions of dollars in CASF funds, including but not limited to the possibility of unfinished projects, unaffordable new services, and insufficient speeds or reliability." (filed October 25, 2012) at 1.

² See "Fastest Net Service in U.S. Coming to Chattanooga" by Steve Lohr on September 12, 2010. http://www.nytimes.com/2010/09/13/technology/13broadband.html?pagewanted=all&_r=0

³ See Lafayette Case Study in *Broadband at the Speed of Light*, available here: <http://www.ilsr.org/broadband-speed-light/>

entities accustomed to borrowing over decades for essential infrastructure. This is true of rural areas as well as metropolitan regions. ILSR has worked with a county in Minnesota that is pursuing a Fiber-to-the-Farm network that will connect everyone in a very low density area. Several municipal networks in rural regions of Minnesota, Iowa, and Wisconsin have begun expanding FTTH outside of town as part of ARRA grants. And finally, many telephone cooperatives have built FTTH in extremely rural areas; North Dakota hosts the largest FTTH network in the nation.⁴

To the extent publicly owned FTTH networks have been limited in offering very fast connections to residents, the bottleneck has largely been in the middle mile. However, the presence of so much additional ARRA-funded middle mile has made this less common and the existence of high-capacity last mile creates a better market for middle mile investments. Unfortunately the same has not been true in reverse; the presence of robust middle mile changes only the operating cost of a last-mile network when the fundamental hurdle limiting last mile investment is the up-front capital investment.

Affordability

Publicly owned networks operated by local governments have been true leaders in making connections affordable. As detailed in ILSR's *Broadband at the Speed of Light* report, the network built by Bristol, Virginia, was one of the first FTTH networks in the nation, having started offering services in 2002.⁵ Upon launch, it offered the lowest price telephone service locally because it declined to charge the optional FCC Subscriber Line Charge. Its rates for broadband Internet access were also lower than those charged by the cable and telephone company for similar services. In the many years since, it has not increased the price for either service, though it has added numerous features to the phone service and speed increases to the broadband service. These rates have been inspected to ensure there is no cross-subsidization. Its television rates have increased, but at rates below industry norms.

Broadband at the Speed of Light also documents how the city of Lafayette, Louisiana has worked to keep very low cost services available to the community. Since that report was

⁴ See <http://www.fiercetelecom.com/story/daktel-dickey-rural-build-ftth-network-covering-10000-square-miles-nd/2012-04-13>

⁵ Available here: <http://www.ilsr.org/broadband-speed-light/>

published, the city launched a new low cost service that combines a telephone package and 3 Mbps symmetrical connection for \$36 per month.

In California, Riverside has received numerous awards for the SmartRiverside program, which refurbishes computers, teaches computer literacy, and uses its municipal Wi-Fi network to ensure low income residents have access to the Internet.⁶

Networks owned by local governments and cooperatives have been among the most affordable options for telecommunications services because they see little reason to increase prices when the cost of delivering bits or completing telephone calls falls year after year. The mission of these organizations is to serve the community, not distant shareholders that demand higher dividends. They simply charge enough to pay operating costs, service debt, and save for upgrades.

Reliability

Networks owned by local governments have a strong track record on reliability. For instance, the Greenlight FTTH network owned by Wilson, North Carolina, measures its continuous uptime in years. Its first business customer has had five years of uninterrupted service.⁷ Though individual components have failed, the network was over-engineered to meet a higher reliability goal. Local governments, which are almost always serving first responders, have been willing to invest more in redundant connections and systems than absolutely required by law or is standard practice among private companies. This is no slight to the professional and reliable network services offered by the private sector, merely the observation that they have to make decisions based on a different calculus in which some investments may not be justified to safeguard against very low probability but high consequence events.

Accustomed to making long term investments, local governments have been investing in FTTH for years. Even without the incentives that public ownership provides, the very nature of a next-generation FTTH network has proven more reliable than older DSL and cable technologies.

⁶ See Interview with Steve Reneker, then CIO of Riverside: <http://www.muninetworks.org/content/community-broadband-bits-11-steve-reneker-riverside-california>

⁷ See *Carolina's Connected Community: Wilson Gives Greenlight to Fast Internet* at <http://www.ilsr.org/wilson-fiber-greenlight/>

Finishing Projects

Both local governments and cooperatives were essential in expanding the electrical grid to everyone in the United States. Cooperatives, in particular have played important roles in achieving near universal access to the telephone. Each of these cooperatives began with little expertise but proved an important piece of the universal service puzzle. There is little reason to believe a recently formed cooperative would be unable to build a modern network if it has the support of a community and can raise capital.

Because local governments and cooperatives must keep constituents/owners satisfied, both entities are among the least likely to fail to complete projects.

Criticism of publicly owned networks is typically premised on a misunderstanding of how telecommunications networks are financed. The existence of deficits and high debt are often used to claim municipal networks are unsustainable. However, these analyses often cherry pick young networks that are indeed running in the red. FTTH networks are large debt-financed capital investments that take years to break even for both public and private owners. Most publicly owned networks have succeeded, some dramatically so. For instance, Utah's Spanish Fork built a network without an authorizing referendum in a community that was lacking broadband access to the Internet. Now, it not only generates a profit despite charging below industry average prices but has also reinvested in resources for creating local media.⁸

Taking all of the above into account, ILSR would still reluctantly agree with DRA that this provides "no guarantee" that non-licensed entities would be more cost effective. In this difficult but nonetheless essential area, guarantees are hard to come by. Further ILSR candidly admits that publicly owned networks and cooperatives may be subject to the same management errors as have struck many private firms. However, in our experience the failure rate of publicly owned networks cannot be said to exceed that of the private sector. There are many reasons for this, most notably the transparency required by publicly accountable institutions and a dedication first to providing high quality service rather than maximizing monetary returns over the short term.

⁸ See <http://muninetworks.org/content/utahs-spanish-fork-city-network-incredible-success> and <http://www.sltrib.com/sltrib/money/55045925-79/network-fork-spanish-community.html.csp>

The Commission Need Not Impose More Stringent Safeguards

Frontier and Division of Ratepayer Advocates argued that safeguards for newly eligible entities should be at least as stringent as those imposed on carriers of last resort. ILSR supports proper safeguards to ensure ratepayer funds are spent wisely. However, the Commission should recognize that some newly eligible entities, particularly local governments, are fundamentally different than private sector providers.

Local governments already have obligations to be transparent and are democratically accountable to the public. They already follow accepted accounting procedures and can be held accountable if they do not uphold the terms of any agreement made with CASF to expand access to the Internet within their jurisdiction. Similarly, cooperatives are regulated by member-owners, who themselves would be harmed by failure to expand access to the Internet.

This form of natural or self-regulation suggests that safeguards on such entities would not have to be as stringent as required of other entities. For additional information, see the fact sheets attached as part of these Comments.

ILSR Cautions Against a Right of First Refusal for Existing Providers

ILSR recognizes that a right of first refusal is thorny question with no obvious answer. However, we have two primary concerns.

1. Existing carriers already have the option of applying for these funds.
2. Solving the rural problem often requires combining multiple jurisdictions of various densities to ensure a network is sustainable.

Regarding our first concern, there is very little probability of a local government or new cooperative forming to serve an area that is well served. Existing carriers have had plenty of opportunity to serve all areas of California and have even forgone subsidies in many cases to do so. As such, they should not be permitted to stop others from meeting unmet needs.

The second concern is more nuanced. We have increasingly seen counties making investments in these networks after recognizing that the existing providers could not provide the level of service

they desired for everyone. Rural counties or rural service districts have a challenge in building a network that can operate without future subsidies. If they are only allowed to connect the unconnected, it may be all but impossible to build a self-sustaining network. A parallel is the challenge of building a health insurance company that only covers those with the chronic conditions that other insurers have refused to cover.

To ensure a sustainable network, these counties, coops, and/or rural service districts should be able to serve everyone in their territory even if some of residents and businesses are already served. Consider a rural county that has several population centers, some of which some are already served by DSL and/or cable providers. Building a network to only connect the unserved is unlikely to be sustainable because every potential user comes with a high cost of connecting. A network passing every resident and business in the county is more likely to be sustainable because lower-cost passings will help to balance higher-cost passings. If many or all of the population centers are carved out because existing carriers get a right of first refusal, the business plan to serve everyone may no longer generate sufficient revenue to pay ongoing expenses and debt.

Thus, ILSR believes the Commission should take care to balance the needs of an entity in serving everyone against the needs of a provider that has not made the commitment to serve all.

Confusion Regarding Local Governments

California Cable & Telecommunications Association (CCTA) noted fears that a local government would “have the incentive to discriminate against any other potential provider in its administration regarding access to rights of way and other permits.” ILSR is familiar with such concerns as they are regularly expressed in response to publicly owned networks throughout the U.S. Such practices would be illegal under a number of laws. ILSR believes the reason this is generally raised as a theoretical concern as opposed to citing court decisions finding local governments in violation is because courts have not found local governments guilty of taking such actions. The Commission should proceed with the expectation that entities will follow all applicable laws.

CCTA further states that “public monies, rather than private investment will be used for a project.” CCTA has no way of knowing how projects will be financed. However, the vast majority of municipal network projects have been funded using revenue bonds that are repaid solely with the proceeds of provisioning services. In fact, this is private investment and not public monies. There have been exceptions, but the use of taxpayer dollars for these projects is quite rare. The use of private investments by local governments actually presents yet another natural safeguard, as local governments have to present detailed business plans and demonstrate a likelihood of success to investors before they can raise sufficient funds to embark on a project.

As to the question raised by CCTA of whether municipal investment are long term viable solutions to the digital divide, we again cite the track record of municipal networks in keeping prices lower for everyone. Further, many municipal networks were built specifically to serve either entire communities or portions thereof that the private sector had not connected, often due to the high cost of doing so. We take the contrary position of CCTA, noting that public investments have been essential in expanding utilities of all forms to universal service.

ILSR Discourages any Local Government-Specific Requirements

Local governments are already accountable to the community in ways that other service providers are not, subjecting them to an additional level of both scrutiny and regulation. As such, the recommendation by CCTA of still further requirements leveled only on local government providers is unnecessary.

Existing providers have sought to create specific hurdles for local government investment in telecommunications networks that are not required for other similar expenditures by local government. ILSR agrees with CCTA and others that before any local government decides on a course of action involving a large investment, it should consult with the public, take comments, and otherwise take care to ensure the public has plenty of opportunity to participate in the decision. However, ILSR has seen that some ostensibly pro-public debate requirements have the effect of actually diminishing such debate.

In particular, a referendum is often suggested as a requirement. Such a procedure is not only time-consuming and costly, but is a poor measure for whether the public actually supports a network project. Because local governments are prohibited from taking a position on a referendum that they are holding, such events are a one-sided affair, often with existing providers spending lavishly to promote their point of view. Local government officials are well aware that if their positions are contrary to the desire of the populace, they will lose their position.

III. CONCLUSION

For the above reasons, ILSR discourages the Commission from adopting any conditions that are specific to local governments. Local governments are already under increased scrutiny compared to other providers.

Respectfully Submitted,

/s/

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