

**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 UTILITY REFORM NETWORK (TURN)
ON THE ORDER INSTITUTING RULEMAKING**



December 18, 2012

Bill Nusbaum
Managing Attorney
bnuusbaum@turn.org

Regina Costa
Telecommunications Research
Director
rcosta@turn.org

TURN
115 Sansome St., Suite 900
San Francisco, CA 94104
Ph. (415) 929-8876
Fax: (415) 929-1132

**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 UTILITY REFORM NETWORK (TURN)
ON THE ORDER INSTITUTING RULEMAKING**

I. INTRODUCTION

The Utility Reform Network (TURN) hereby submits its Reply Comments on the Order Instituting Rulemaking (OIR) to Consider Modifications to the California Advanced Services Fund (CASF).

**II. MOST OF THE OPENING COMMENTS FULLY SUPPORT THE
COMMISSION'S PROPOSAL TO PERMIT NON-TELEPHONE CORPORATIONS TO
BE ELIGIBLE TO APPLY FOR CASF FUNDS**

The vast majority of opening comments filed in this proceeding support the Commission's proposal to expand the eligibility requirements for CASF applicants to include non-telephone corporations. Many of the parties represent rural areas of California and discussed their intent to seek CASF funding if they were made eligible.¹ However, unserved and underserved consumers do not only reside in rural California. As the City and County of San

¹ See, for example, Comments of Sierra Economic Development Corporation on Rulemaking 12-10-1-012 for OIR to Consider Modifications to the CASF, Comments of the Regional Council of Rural Counties on Rulemaking 12-10-1-012 for OIR to Consider Modifications to the CASF, Comments of Cal.Net, Inc. on the Order Instituting Rulemaking 12-10-012 to Consider Modifications to the California Advanced Services Fund, Comments of Valley Vision on Rulemaking 12-10-1-012 for OIR to Consider Modifications to the CASF.

Francisco points out, consumers in urban centers may also not have affordable access to robust broadband offerings.²

TURN fully supports the concept, embodied in the comments of Access Humboldt (AH) that:

Community-based and locally owned entities can provide open internet and other broadband transport services that are more accountable to the communities they serve with faster, more effective customer service, especially for the least served people and places that are the focus of the CASF funds.³

III. PARTIES OPPOSING EXTENDING CASF ELIGIBILITY TO NON-CERTIFICATE/D REGISTERED ENTITIES OR PARTIES PROPOSING RIGID SAFEGUARDS PRESENT EXAGERATTED ARGUMENTS

Several parties either outright oppose permitting non-certificated or non-registered entities from participating in the CASF or propose such onerous conditions they deem to be “safeguards” as to effectively preclude non-certificated/registered entities from participating.

For example, the California Cable & Telecommunications Association (CCTA) does not outright oppose the Commission’s proposal. However, CCTA expresses concerns regarding local governmental entities applying for and receiving CASF monies. CCTA asserts, with no supporting evidence, that such entities have “the incentive to discriminate against any other potential provider in its administration regarding access to rights of way and other permits.”⁴ This concern is overblown given that such actions by a governmental entity would be patently illegal. It is significant that CCTA provides no case citations or other evidence to prove its assertion.

Furthermore, CCTA alleges that “there is little if any evidence that municipal investments in broadband networks are long term viable solutions to the digital divide.”⁵ The

² Opening Comments of the City and County of San Francisco on the Order Instituting Rulemaking to Consider Modifications to the California Advanced Services Fund, pp. 2-3 (SF).

³ Comments of Access Humboldt on the Order Instituting Rulemaking, p. 1 (AH).

⁴ Opening Comments of the California Cable & Telecommunications Association, p. 3 (CCTA).

⁵ CCTA, p. 3.

Division of Ratepayer Advocates (DRA) makes a similar claim arguing that “there is no evidence that the Commission could expect to see better projects or would not experience significant risks associated with its lack of jurisdiction over these entities.”⁶ This statement is also exaggerated and not supported with any evidence. In fact, there are many successful examples of municipal broadband across the country. In California, cities such as San Bruno have implemented municipal cable, internet and phone systems. Santa Monica, CA has provided high-speed fiber to government agencies and businesses for several years. Riverside, CA has a muni-wi-fi system for low-income consumer access. In other states municipal broadband has also been successful – for example in Bristol, Virginia, Wilson, North Carolina, and Corpus Christi, Texas.⁷ There have also been some notable failures, which is why appropriate safeguards such as those reflected in Commission Resolution T-17233 must be adopted for all CASF applicants.

Aside from its unsupported allegations, CCTA also proposes very stringent requirements for governmental entities seeking CASF monies including: “that projects be subject to a public hearing, be approved by the voters, and that use of any locally-owned utility not be assumed in the financial assumptions for operating the network... and a local government must be able to demonstrate that it can operate its project without subsidy once the CASF grant is expended for infrastructure.”⁸ Governmental entities have strict processes and procedures to follow before expending any money on projects such as broadband. Requiring voter approval would very well be a non-starter for municipal broadband projects since the municipality is generally prohibited from participating in the debating process allowing a carrier to spend millions of dollars to defeat any public referendum. TURN submits that the safeguards embodied in Commission Resolution T-17233 are sufficient to protect ratepayers.

⁶ Comments of the Division of Ratepayer Advocates on the Order Instituting Rulemaking to Consider Modifications to the California Advanced Services Fund, p. 2 (DRA).

⁷ See, Reply Comments of the Institute for Local Self-Reliance filed in this proceeding today.

⁸ CCTA, p. 3.

The Small LECs state that they are “skeptical of the ultimate benefit of an expansion to the CASF to include unregulated, unregistered providers.”⁹ However, if the Commission proceeds with its proposal to include such entities, the Small LECs argue for certain conditions such as the requirement of a performance bond. In addition, the Small LECs propose that

...to the extent that a CASF project is proposed in a portion of a Small LEC's territory, the Small LECs should have an opportunity to show either: (1) that the area identified already has sufficient facilities to provide the required broadband speeds; (2) that construction plans are in place to upgrade current facilities to provide the required broadband speeds; or (3) that the current facilities can be upgraded to meet the applicable broadband standards at a lower cost than the amount being requested from the CASF.¹⁰

TURN appreciates the Small LECs' concerns that a CASF grant might be issued to a competing entity. However, the proffered solution that the Small LECs should have the right of first refusal for any projects that a non-certificated/registered entity applies for is excessive. Essentially what the Small LECs appear to desire is in areas where they have heretofore refused to provide broadband services they might be stimulated to provide it if someone else attempts to do so. This approach holds the citizens of those underserved and unserved areas hostage to the Small LECs. It also creates an untenable situation for potential alternative providers who may expend significant effort on developing a business plan and a CASF application only to have their efforts rejected simply because the Small LEC in particular geographic area finally steps up and say they will expand their broadband network.

DRA and Frontier Communications (Frontier) strenuously oppose the Commission's proposal to expand eligibility to non-certificated/registered entities. Both parties' concerns appear to be based on the argument that the Commission lacks “complete authority” over such entities making the grant of CASF monies riskier than if the applicants are carriers. DRA in particular expresses grave concerns about the Commission's “ability to maintain oversight over

⁹ Opening Comments of the Small LECs on Order Instituting Rulemaking, p. 4 (Small LECs).

¹⁰ Small LECs, p. 2.

the projects and protect ratepayers.”¹¹ DRA goes further and asserts that the Commission lacks the power to enforce conditions on non-regulated entities since “there would be no nexus to public utility regulation.”¹²

TURN is sensitive to the concerns raised by DRA and fully supports the need for clear oversight over the CASF. However, we submit that the Commission could condition the award of funds on the recipient’s agreement to abide by all the terms of the grant and submit to Commission authority for purposes of CASF compliance. This is similar to what the Commission has done with respect to wireless LifeLine. In D.10-11-033 the Commission held that “all carriers that are able to comply with the requirements of GO 153 may participate in the California LifeLine Program, including wireless and VoIP carriers.”¹³ Among the conditions the Commission has imposed for wireless and VoIP carriers to voluntarily offer LifeLine service are the filing of a schedule of rates and charges for such service and a LifeLine offering that is the same as that provided by wireline carriers. In exchange for such compliance the alternative carriers are eligible to receive subsidy funding from the California LifeLine Program fund. In a similar vein, the Commission can require non-regulated entities to comply with conditions in order to receive CASF funding including consumer protections, quality standards any price caps, etc.

If the Commission decides to support non-certificated/registered entities being eligible for CASF monies, DRA proposes additional but unspecified safeguards. While some additional safeguards may be prudent, the Commission must achieve the appropriate balance between possible added risk and the benefits of delivering broadband to underserved and unserved communities. “Safeguards” that are so onerous as to effectively preclude prospective applicants from even applying for a CASF grant do not serve the public interest. TURN urges the

¹¹ DRA, p. 4.

¹² DRA, p. 5.

¹³ D.10-11-033, p. 68.

Commission to be sensitive to these potentially competing interests and strike the best balance possible. In part, this will develop from a rigorous review of applications. To assume, as does DRA, that non-certificated/registered entities will inevitably not deliver on commitments made as part of the CASF process, we contend is the incorrect starting point. A reasonable, rigorous process can in fact deliver results and lead to enhanced availability of broadband.

Dated: December 18, 2012

Respectfully submitted,

/S/
Bill Nusbaum
Managing Attorney
TURN