

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution T-17443 Implementation of New
Timelines for California Advanced Services
Fund Applicants

Res. T-17443
(Served June 11, 2014)

**COMMENTS OF THE CENTRAL COAST AND CENTRAL SIERRA CONNECT
REGIONAL BROADBAND CONSORTIA
ON DRAFT RESOLUTION T-17443**

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I. Summary

The Central Coast Broadband Consortium and Central Sierra Connect endorse Draft Resolution T-17443 (the Draft) which sets a new schedule and process for applications for infrastructure grants and loans from the California Advanced Services Fund (CASF). We also offer two comments regarding the proposed requirements. The Central Coast Broadband Consortium and Central Sierra Connect are the CASF-funded Regional Broadband Consortia representing California's central coast region, which includes the Counties of San Benito, Monterey and Santa Cruz, and central Sierra region, which includes the Counties of Alpine, Amador, Calaveras, Mariposa and Tuolumne.

II. The Draft establishes a fair process with realistic deadlines which would support the Commission's goal of providing broadband access to 98% of households in California by December 31, 2015

The process proposed in the Draft allows Regional Broadband Consortia adequate time and opportunity to identify areas of need, recruit qualified entities to apply for CASF grants and loans to fill those needs, and provide assistance with collecting and analysing coverage data and other necessary information and documents.

The establishment of a quarterly application window is particularly helpful in two respects. First, it permits small or already well-developed projects to be submitted quickly, while making it possible to devote extra time to the preparation of more challenging applications. Second, it allows the CPUC to quickly reject incomplete applications while

imposing only a minor delay on applicants who wish to resubmit, thus freeing up staff to focus on evaluating fully developed proposals.

Encouraging the submission of high quality applications and quickly rejecting those that need additional work will go a long way toward fixing the most frustrating problem with the current CASF program: the lengthy review process (sixteen months and counting for some proposals) and the substantial and often prohibitive opportunity costs associated with it. We believe that reducing the delay and uncertainty inherent in the current program will make it much easier to recruit highly qualified and financially capable applicants.

III. The right of first refusal process proposed in the Draft will delay vital broadband infrastructure projects for up to a year

As currently proposed, the right of first refusal granted to any existing facilities-based provider allows letters of intent to upgrade substandard broadband service in a given area to be submitted on September 26, 2014, with the immediate effect of precluding applications by others for CASF support for infrastructure projects in that area until July 1, 2015, which is the first application window following the April 1, 2015 construction deadline.

While we applaud the requirement for rapid completion of bona fide projects by incumbents, we note that there is no penalty for submitting a letter of intent and failing to follow through, nor is there any due diligence required prior to its submission or acceptance. While an argument could be made that a company holding a certificate of public convenience and necessity (CPCN) might be subject to penalties for failure to fulfill

a promise made to the Commission, there is no such prospect for companies which do not hold a CPCN. Consistent with the language and intent of Senate Bill 740, the Draft would allow any incumbent, CPCN holder or not, to exercise a right of first refusal. As it stands, a broadband provider could file a letter of intent which covers some or all of its service area, renege on that commitment and thereby stall competitive project applications until July 1, 2015 with no consequence to itself.

We recommend that the Commission require incumbents who exercise their right of first refusal to meet the same standards that any CASF applicant would have to meet, including submission of project budgets, schedules, technical plans, the posting of a performance bond and acquiescence to the jurisdiction of the Commission in all respects. Such a change would bring the Draft into compliance with SB 740 which requires an incumbent who exercises a right of first refusal to “demonstrate to the commission that it will, within a reasonable timeframe, upgrade existing service”.

IV. The right of first refusal is unnecessarily preemptive

As currently proposed, the exercise of any incumbent’s right of first refusal will preclude CASF grant and loan applications for projects in a given area for nine months from all incumbents and CPCN holders, as well as non-CPCN holders. This preemptive power goes beyond what the language of SB 740 requires and beyond the legislative intent in writing it.

SB 740 requires only applications submitted by “an entity that is not a telephone corporation” be subject to a right of first refusal. While it is within the Commission’s

discretion to establish a broader standard, we note that even SB 740's most vehement opponent – the California Cable & Telecommunications Association – emphatically asserted that it should not limit the ability of then-qualified entities to apply for CASF funding, an assertion which was echoed by other industry representatives as well as legislators.

We endorse that position and ask that the Draft be amended to allow incumbents to preempt only those projects submitted by non-CPCN holders. Allowing competing applications from qualified telephone corporations, which the Commission may approve or not, will increase the likelihood of high quality proposals from well qualified applicants.

V. Conclusion

The CASF program plays a vital role in the development of California's broadband infrastructure and in the inclusion of all Californians in the opportunities and benefits of the 21st century. With the modifications recommended herein, we urge the Commission to adopt Draft Resolution T-17443.