

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

Order Instituting Rulemaking to Consider
Modifications to the California Advance
Services Fund.

R.12-10-012
(Filed October 25, 2012)

**COMMENTS OF PACIFIC BELL TELEPHONE COMPANY D/B/A AT&T
CALIFORNIA (U 1001 C); AT&T CORP. (U 5002 C); TELEPORT
COMMUNICATIONS AMERICA, LLC (U 5454 C); AND AT&T MOBILITY LLC
(NEW CINGULAR WIRELESS PCS, LLC (U 3060 C); AT&T MOBILITY
WIRELESS OPERATIONS HOLDINGS, INC. (U 3021 C); AND SANTA BARBARA
CELLULAR SYSTEMS LTD. (U 3015 C)) ON THE ADMINISTRATIVE LAW JUDGE'S
SEPTEMBER 5, 2018 RULING REQUESTING COMMENTS ON THE ELIGIBILITY
FOR AND PRIORITIZATION OF BROADBAND INFRASTRUCTURE FUNDS FROM
THE CALIFORNIA ADVANCED SERVICES FUND**

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AT&T¹ provides these Comments in response to the September 5, 2018 Administrative Law Judge’s Ruling Requesting Comments on the Eligibility for and Prioritization of Broadband Infrastructure Funds from the California Advanced Services Fund (“September 5 Ruling”).

I. INTRODUCTION

The September 5 Ruling seeks additional comment on six topics (with sub-questions) related to various issues involving funding levels and evaluation of applications for broadband infrastructure grants under the California Advanced Services Fund (“CASF”). These comments follow up on comments and reply comments previously filed in response to a draft Staff proposal² regarding procedures for awarding and administering CASF grants in light of statutory amendments made by AB 1665, as well as comments filed in response to the Assigned Commissioner’s Ruling of July 11, 2018. As discussed below, AT&T believes that most of the proposals in the September 5 Ruling are unnecessary, in that the matters they address are better dealt with through the scoring process to evaluate CASF applications and by focusing on the deployment-based goal of AB 1665 rather than imposing added obligations outside the statute.

In AT&T’s comments filed earlier in this proceeding, AT&T recommended a simple, commonsense framework consistent with AB 1665 and designed to complement the FCC’s framework for the Connect America Fund (“CAF”). AT&T’s recommended framework would specifically target areas with broadband availability needs, encourage participation, and ensure that CASF support recipients deliver on their service commitments in an expeditious manner. AT&T developed this framework based on its experiences as a prior CASF support

¹ Pacific Bell Telephone Company d/b/a AT&T California (U 1001 C); AT&T Corp. (U 5002 C); Teleport Communications America, LLC (U 5454 C); and AT&T Mobility LLC (New Cingular Wireless PCS, LLC (U 3060 C), AT&T Mobility Wireless Operations Holdings, Inc. (U 3021 C), and Santa Barbara Cellular Systems, Ltd. (U 3015 C)).

² Appendix C to the Amended Scoping Memo.

recipient, a CAF support recipient, and in operationalizing CASF and CAF internet service availability and other requirements. AT&T also developed this framework based on its experiences evaluating whether to apply for funding from various government programs supporting internet service availability and its experience in actually applying for such support. AT&T continues to recommend that the Commission adopt AT&T's framework as outlined in its prior comments.

II. COMMENTS ON SPECIFIED ISSUES

A. Eligibility for 100% Funding

The September 5 Ruling first asks for comment on the following questions related to eligibility for 100% funding of a broadband infrastructure project:

- 1) *How should the Commission determine whether a CASF project application should be eligible for 100 percent funding?*
 - a. *How should the CPUC implement the funding level for a CASF infrastructure application pursuant to Pub. Util. Code Sec. 281(f)(13)³?*
 1. *How should the Commission define "location and accessibility" of an area, as required in statute?*
 2. *How should the Commission define the "existence of communication facilities" that may be upgraded to deploy broadband?*
 3. *How extensively should an applicant be required to use communication facilities in order to receive credit for doing so under the funding criteria?*
 4. *What factor(s) would justify that a project makes a "significant contribution" to achieving the program goal? For example, if the application proposed to serve more than 300 households, would that be a "significant contribution"?*

³ Cal. Pub. Util. § 281(f)(13): "(13) The commission may award grants to fund all or a portion of the project. The commission shall determine, on a case-by-case basis, the level of funding to be provided for a project and shall consider factors that include, but are not limited to, the location and accessibility of the area, the existence of communication facilities that may be upgraded to deploy broadband, and whether the project makes a significant contribution to achievement of the program goal."

The scoring process proposed by Staff, as modified by AT&T, is a sound method for considering the factors listed in Section 281(f)(13) as part of the overall decision regarding each CASF application. The scoring process is used to determine which projects will be granted funding based on a high score on the criteria determined by the Commission. Because those criteria are part of deciding whether a project will be funded at all, they are sufficiently included in the Commission's overall determination to satisfy Section 281(f)(13).

In particular, the "location and accessibility" of an area are addressed in the scoring process by the points available for serving a "low-income" area or a "high priority" area (that is, one with no internet service or only dial-up internet).⁴ The "existence of communications facilities that may be upgraded to deploy broadband" is considered in the need to construct middle-mile infrastructure, which will be addressed as part of every application.⁵ "[W]hether the project makes a significant contribution to achievement of the program goal" is addressed through the scoring process by awarding points based on the number of households served, the projected cost per household, proposed pricing, and government and community support.⁶ If, using these criteria, the Commission believes the project should be funded, it should be fully funded for the amount offered by the applicant.

The September 5 Ruling next asks for comment on the following questions related to 100% funding of broadband infrastructure projects:

⁴ AT&T Opening Comments on Phase II Staff Proposal at 24; Pub. Util. Code § 281(b)(2)(B) (discussing areas to be prioritized).

⁵ Amended Scoping Memo, Appendix C, Proposed Application Item 1.

⁶ AT&T Opening Comments on Phase II Staff Proposal at 24.

- b. *Should additional factors be included in this funding determination?*
 1. *For example, should the Commission provide additional funding for applications that serve low-income communities?*
 2. *Should other criteria previously raised in comments be included, such as unconnected public safety infrastructure? Please provide specific recommendations about objective and reasonable methods by which the CASF should implement these criteria.*

CASF projects should be chosen based on the criteria listed above, including those identified in Section 281(f)(13), and, if chosen, a project deserves to be fully funded. To the extent the Commission believes it is important to encourage certain types of applications by using weighted factors, that can be achieved in the scoring process used to select projects. That scoring process would award points for serving low-income and high-priority areas. Once winning applications are selected under that scoring process, the presumption should be that funding will be for 100 percent of the costs, for all the reasons discussed in AT&T's prior comments.⁷ After all, the funding amount requested by the applicant is what the applicant believes it needs to successfully complete the project. Awarding less than the amount requested for a project that has satisfied all of the scoring criteria would be a disincentive to participation in the CASF program.

The September 5 Ruling also asks for comment on the following questions related to 100% funding of a broadband infrastructure project:

- c. *What are the appropriate values, expressed as points or percentages, for each potential factor in the CASF eligibility criteria?*
 1. *Is it necessary for those percentages to add up to 100 provided there is a maximum funding level of 100 percent?*

⁷ AT&T Opening Comments on Phase II Staff Proposal at 25; AT&T Comments on Assigned Commissioner's July 11, 2018 Ruling at 8.

2. *Should there be the multiple paths to 100 percent funding? If so, what/how?*

AT&T maintains that there should be multiple paths to 100 percent funding, for all the same reasons that it supports 100 percent funding as the default presumption. As far as “points” go, however, AT&T does not support a points-based approach to determine funding, separate from the scoring process used for choosing successful applications. If the scoring process is designed to create the right incentives, winning applications will have proven the propriety of 100 percent funding of that project.

B. Potential Requirement to Offer Affordable Broadband Service Plans as a Condition of CASF Funding

The second question in the September 5 Ruling asks for comment on the following:

- 2) *Should the Commission require CASF grantees to offer affordable broadband service plans as a condition of receiving CASF funding?*
 - a. *Should the CASF Program require CASF grantees to offer affordable broadband service plan(s) to receive CASF funding? If so describe the justification.*

For example, a provider offering a national, affordable low-income plan would meet this requirement so long as the plan is available to customers in the CASF grant area.

- b. *Should the Commission incentivize applicants to provide affordable plans though the funding determination required in Pub. Util. Code Sec. 281(f)(13)?*
- c. *What is an affordable monthly price? What other factors should the Commission consider?*
- d. *How should applications in low-income areas be eligible for 100% funding? For example, should the “Maximum Funding Level: 100%” table below be modified.*

CASF broadband infrastructure grants should not be conditioned on or tied to specific pricing levels for broadband service.⁸ The primary purpose of CASF funding is to promote the availability of broadband service. As part of deciding which projects to fund, the proposed

⁸ Pub. Util. Code § 281(a)-(b).

scoring process would allow the Commission to give some weight to proposed pricing and whether the project serves low-income or high-priority areas.⁹ In that way, the scoring process creates incentives for applicants to serve those areas with reasonable prices, but does not cross over into affirmative rate regulation or oversight, which would only create disincentives for broadband deployment. Moreover, there are other programs available to promote the availability of low-priced broadband service. Given that the scoring process already would create the proper incentives, that rate regulation would deter investment, and that Section 281 does not require any particular type of pricing plans, the Commission should not mandate such plans as part of the CASF broadband infrastructure program.

C. Scoring Method versus Minimum Performance Standards

The third question in the September 5 Ruling seeks comment on a potential alternative to the scoring criteria approach used to assess CASF applications in the past.

- 3) *Should the Commission eliminate the current scoring criteria and replace it with a different evaluation process focused on eligibility, minimum performance standards and funding level determinations?*
 - a. *Should the Commission eliminate the Scoring Criteria used in the program and included in the Staff Proposal and replace it with minimum performance requirements. These requirements would include:*
 - *A commitment to serve all households in the proposed project area;*
 - *Speeds of at least 10 mbps downstream and 1 mbps upstream;*
 - *Latency of 100 ms or less;*
 - *If the project receives a categorical exemption under CEQA, it would be completed in 12 months or less and projects requiring additional CEQA/NEPA review must be completed within two years of the approval of those reviews;*
 - *Data caps, where used, exceed 190 GBs per month; and*

⁹ AT&T Opening Comments on Phase II Staff Proposal at 24.

- *The applicant offers an affordably priced plan (See Question 2).*
- b. *Staff proposes to revise its previous Ministerial Review proposal so that the process for reviewing applications, including funding level determinations, is done in the manner outlined in the table below.*

Maximum Funding Level: 100%	
Baseline for Eligible Project: 60% of total construction costs	
Presence of Dial-up Only: + 40%	
Low Income: Up to + 40%	
<input type="checkbox"/> Median Household Income for community in application is less than \$49,200. <input type="checkbox"/> Applicant offers an affordable entry-level product to low-income customers.	
PU Code Sec 281 (f)(13) Requirement: + 10% per criterion, up to + 20%	
<input type="checkbox"/> Inaccessible Location <input type="checkbox"/> Uses Existing Infrastructure <input type="checkbox"/> Makes a Significant Contribution to the Program	
Ministerial Process	Resolution Process
Maximum Cost/HH <input type="checkbox"/> \$4,000 - 8,000 for wireline <input type="checkbox"/> \$1,500 for fixed wireless	Does not meet all criteria under Ministerial Process Amounts, up to 100%, by commission determination
Maximum Grant Amount: \$5,000,000	
Must be CEQA-exempt, or approval letter must state that authorization to construct and release funds will be provided in a forthcoming resolution.	

AT&T opposes eliminating the use of scoring criteria or moving to a different evaluation process. As discussed in AT&T’s prior comments, application scoring, like Staff’s originally proposed process with AT&T’s modifications, would help to streamline and simplify the evaluation process and can be tailored to create incentives for applicants to participate in the CASF program in a way that serves its goals.

It also is unclear how the proposed “minimum performance requirements” would justify abandoning Staff’s proposed scoring process. A commitment to serve “all” households¹⁰ in the proposed project area is not realistically feasible. At the application stage an applicant will not know everything about the project area or specific problems that may arise in serving certain households and, therefore, would be unlikely to be able to make that kind of commitment. Offering broadband at a speed of 10/1 merely repeats what the statute already requires. And, as AT&T proposed, scoring criteria would account for latency as part of the larger overall mix of scoring an application.¹¹ The other proposals, for data caps and an affordable pricing requirement, are not part of the statute and verge more toward regulation of specific broadband offerings, rather than simply promoting deployment. If anything, such proposals would deter applications rather than promote them, contrary to the main purpose of the Broadband Infrastructure Fund.

As also noted in prior comments, while AT&T believes it is important to streamline the CASF application and application review process to encourage providers to participate in the program, AT&T opposes use of a ministerial review process for the reasons previously discussed.¹² AT&T continues to recommend that all applications be due on or before an annual date certain, be evaluated at the same time, and use the same scoring and criteria to rank applications against one another. AT&T’s simple, commonsense approach will better drive the efficiency and effectiveness of the CASF program, in a manner designed to get service to the most people who are unconnected, at the lowest cost to the program per location.

¹⁰ As explained in its Opening Comments, AT&T recommends that “household” be defined for CASF purposes as it is for census purposes.

¹¹ AT&T Opening Comments on Phase II Staff Proposal at 24.

¹² AT&T Opening Comments on Phase II Staff Proposal at 17-18.

D. Potential Limit on Reimbursement of Administrative Expenses

The fourth question in the September 5 Ruling concerns a potential cap on the percentage of awarded funds that can be for “administrative” expenses:

- 4) *Should the Commission limit a CASF grantee’s Administrative Expenses to 15 percent of total project costs?*
 - c. *The Commission limits the reimbursements of service providers’ claimed administrative expenses funded by California’s universal service fund programs, including the High-Cost Fund Program and the California LifeLine Program. Should the CASF Program also limit the reimbursement of administrative expenses claimed by CASF grantees?*
 1. *How should the CASF Program define an administrative expense?*
 2. *Should the reimbursement of administrative expenses claimed by CASF grantees be limited to 15% of the CASF-funded project?*

Reimbursement of administrative expenses should not be arbitrarily capped. As discussed in AT&T’s prior comments, the scoring approach originally proposed by Staff, as amended by AT&T, would create incentives for CASF applicants to keep their proposed cost-per-household low and efficient, both in order to win funding and, if such costs are below the per-household thresholds proposed by Staff, to avoid some burdens and obligations during the application process.¹³ By contrast, placing a fixed cap on administrative expenses would create an extra obligation for applicants to separate out expenses and create potential ambiguity or disputes over which costs count as “administrative.” It also would penalize certain types of applicants or projects that might require more administrative work than other types, even though both seek to bring the same kinds of benefits to consumers.

¹³ See AT&T Opening Comments on Phase II Staff Proposal at 15.

E. CAF Providers and Satellite Broadband Service

1. CAF Providers Seeking CASF Funds

Part 5 of the September 5 Ruling first asks about CASF funding for census blocks where some households may be covered by CAF funds:

- 5) *How should the Commission treat CAF providers seeking CASF funds? How should the Commission treat satellite broadband service?*
 - a. *Pub. Util. Code Sec. 281(f)(13) and 281 (f)(5)(C)(i) prohibits spending and CASF funding in census block with Connect America Fund accepted locations, except, as noted in 281 (f)(5) (C)(ii), when the provider receiving Connect America Fund support applies to build beyond its CAF accepted locations. How should the Commission require applicants submitting applications under these circumstances separate CASF and CAF financing?*
 1. *For example, if a census block in an application contains ten households and three CAF accepted locations, should the Commission assume the CAF locations are households, and only fund the seven remaining households?*

The question of how to treat CAF funding recipients that may wish to expand beyond their CAF coverage with CASF funding has been addressed in other AT&T comments. With regard to the specific question here of how to separate CAF funding from CASF funding in the same census block, AT&T proposes allocating funding by share of eligible households. Specifically, the applicant would divide the total number of households in the area by the number of CAF-reported locations to determine a CAF percentage. The applicant would then use that CAF percentage to determine the funding for the CAF locations. The remainder of the total funding would be for the CASF households.

2. Satellite Providers

Question 5 in the September 5 Ruling next asks about satellite broadband providers.

- b. *How should the Commission treat satellite providers receiving CAF support?*

1. *Is a satellite provider an “existing facility-based provider,” as that term is used in Pub. Util. Code Sec. 281 (f)(5)(C)(ii)? (Note this is particularly important because the FCC recently awarded CAF funding to a satellite provider.)*
2. *If a satellite provider is an existing facility-based provider, should the Commission revise CASF rule to include satellite service in the definition of a served area? (Note that currently, an area served by satellite is considered served only if that service was provided through a CASF grant.)*

The Commission should be aware that, if satellite internet service is counted in identifying areas eligible for CASF support, virtually every census block would be deemed “served” and therefore ineligible for CASF funding. In the context of the CAF support mechanisms, the existence of satellite broadband has not resulted in disqualifying any area from being eligible for CAF support.

F. Information to Include in Project Summaries

The sixth question in the September 5 Ruling deals with whether CASF applicants should be required to provide certain items in the “Project Summary” portion of their applications:

- 6) *Should the Commission require additional information in project summaries?*

In addition to current requirements, Staff proposes that the Commission require applicants to include the following items in Application Item 1 – Project Summary:

- *Identify main major infrastructure: miles of planned fiber, Central Offices used, number of remote terminals/fiber huts/wireless towers to be built, and if an IRU is used;*
- *Identify major equipment expenses (e.g., number of DSLAMs, multiplexers, etc.);*
- *Estimated breakdown of aerial and underground installation and if the poles or conduits are already in place; and*
- *Estimated construction timeline.*

There is no need to require the listed items in CASF applications or for CASF funding. As discussed in AT&T’s Opening Comments, most of the details required in a project summary

should not be required if the per-household CASF support amount for the project is less than the applicable threshold proposed by Staff. The purpose of that proposal is both to create an incentive for applicants to seek efficient amounts of CASF support and also to streamline and simplify the application process. Adding new requirements as part of a project summary, by contrast, would make the application process more complex and burdensome. For example, given the uncertainties inherent in any project, giving even an estimated construction timeline can be very difficult. It also is unclear how providing all the extra proposed details would assist the Commission in evaluating applications, since none of the listed information relates to matters included in Staff's proposed scoring list. The burdens of providing the proposed extra detail would outweigh the benefits.

III. CONCLUSION

For the reasons stated in its various filed comments, AT&T recommends that the Commission adopts AT&T's proposals for CASF broadband infrastructure grants.

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Respectfully submitted,

/s/

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