

**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
(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 (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 ASSIGNED COMMISSIONER RULING
SETTING WORKSHOPS AND SEEKING COMMENT ON 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 July 11, 2018 Assigned Commissioner Ruling Setting Workshops and Seeking Comment on Eligibility for and Prioritization of Broadband Infrastructure Funds From the California Advanced Services Fund (“July 11 Ruling”).

I. INTRODUCTION

The July 11 Ruling seeks additional comment on six topics related to 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 proposal regarding procedures for awarding and administering CASF grants in light of statutory amendments made by AB 1665. The Staff proposal was included as Appendix C to the Amended Scoping Memo. As in its previous comments, AT&T’s comments here focus on issues related to the Broadband Infrastructure Grant Account and making recommendations for building upon and improving Staff’s proposal. AT&T’s comments here and the proposals in its prior comments are aimed at serving the goals of AB 1665 by ensuring that the process for awarding CASF Broadband Infrastructure funds is simple, as speedy as possible, and seeks to promote more provider participation. The more manageable the process is, the more likely it will be to attract more bids and bidders, thereby increasing the availability of internet access service in areas that lack it.

II. COMMENTS ON SPECIFIED ISSUES

A. Eligibility and Challenge Process

1. Test for Eligibility of a Census Block

The July 11 Ruling notes that even when an internet service provider has subscribers within a census block, not all households within that census block may have access to internet

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)).

service.² The Ruling then asks, “Given the potential overstatement of ubiquitous availability within census blocks, should a census block only be CASF-eligible if the subscription rate within that census block is less than 51% of all households?”³ The Ruling further proposes that a census block be considered “served” only if “a majority of households in the census block subscribe to wireline or fixed wireless Internet service.”⁴

The Commission should not determine a census block’s eligibility based on subscribership, for several reasons. Any such approach would conflate the concepts of subscribership and availability and be contrary to the language and policy of AB 1665, as well as being much more difficult to apply than the approach required by AB 1665.

First, AB 1665 does not allow the Commission to determine the eligibility of a census block based on subscribership levels rather than availability of 6/1 or faster internet service. Public Utilities Code § 281(f)(5)(A) (the codification of AB 1665) states that a project is eligible to receive funding from the Broadband Infrastructure Grant Account if the project employs infrastructure capable of providing internet access at speeds of 10 Mbps downstream/1 Mbps upstream (10/1) to “unserved households in census blocks where no provider *offers access* at speeds of at least” 6 Mbps downstream and 1 Mbps upstream (6/1). (Emphasis added). Accordingly, a census block is not eligible for CASF funding if any provider currently *does offer* 6/1 or faster internet service anywhere in that census block. The Legislature could have made eligibility of a census block turn on subscribership levels rather than availability, but did not. Nor did the Legislature require that 6/1 or faster internet service have “ubiquitous availability” (or even 51% availability) in a census block. Instead, the Legislature chose to rely on the simpler measure of whether any provider “offers access” to 6/1 or faster internet service there. The Legislature’s choice precludes use of subscribership rather than availability to determine the

² July 11 Ruling at 4.

³ *Id.*

⁴ *Id.*

eligibility of a census block, because that change would depart from the plain language of the statute.

Second, using subscribership rather than availability would conflict with the goals of the statute. The purpose of the Broadband Infrastructure Grant Account is to increase *deployment* of internet access services to unserved areas. Public Utilities Code §§ 281(a)-(b) state that “[t]he commission shall develop, implement, and administer the California Advanced Services Fund program to encourage *deployment* of high-quality advanced communications services to all Californians” and that “[t]he goal of the program is, no later than December 31, 2022, to approve funding for infrastructure projects that will provide broadband *access* to no less than 98 percent of California households in each consortia region.” (Emphasis added). Consistent with that goal, the focus for determining eligibility should be on determining the census blocks where 6/1 internet service is not yet available in any part of the census block from any provider. Households may or may not choose to subscribe to internet service once it is available, but the statute’s goal is to promote deployment of internet access service as the necessary first step.

Third, there is no compelling evidence to prove a direct correlation between low subscribership and lack of availability, certainly not to the degree where one could assume that low subscribership is a permissible way to determine whether “no provider offers access” to 6/1 or faster internet service, as required by Pub. Util. Code § 281(d)(5)(A). In fact, publicly available data show that although 10/1 internet access is widely available, many households do not subscribe to it. According to the most recent data available, as of December 2016, 95.9% of housing units in the United States had access to internet service at speeds of at least 10/1, but only 66% of households subscribed to internet access service at speeds of 10/1 or higher. The

results in California are similar. As of December 2016, 98.1% of housing units in California had access to at least 10/1 internet service but only 73% of households subscribed to it.⁵

Based on this data, equating subscription rates with availability would likely overestimate the number of census blocks that lack access to 6/1 or better service. The result would be that many census blocks that actually have access to at least 6/1 internet service would be considered eligible for CASF funding, which could lead to misdirecting limited CASF dollars to areas that do not need support. This not only would harm private sector providers in areas where the business case for private sector deployment may already have been tenuous, but also would divert support away from areas where consumers have no meaningful internet access.⁶

Fourth, determining eligibility based on what percentage of households in a census block has subscribed to 6/1 internet service would be administratively inefficient, for it would impose a significant additional burden on internet service providers, and on the Commission and Staff, when determining the eligibility of census blocks. In order to determine which census blocks are eligible for funding, the Commission would have to require internet service providers not only to report subscribership data by census block, but also to somehow determine the percentage of households in the census block that has actually subscribed to 6/1 or faster internet service (a figure that might change every day). Even if that could be done, the process would be very

⁵ Sources for United States and California availability vs. subscription statistics are: Census NBM Reports 85 and 86, Percent of US and State Housing Units With Fixed Broadband at 10 Mbps Down & 1 Mbps Up – December 2016 (most recent available, overlaying FCC Form 477 broadband availability data with census data, available at http://censusnbm.com/reports_dec2016_p3.php, last checked Aug. 7, 2018); and FCC Internet Access Services Report, Figure 32, Residential Fixed Connections & Households by State as of December 31, 2016 (most recent available; available at <https://www.fcc.gov/internet-access-services-reports>, last checked Aug. 7, 2018).

⁶ Studies have shown that there are a variety of reasons that consumers do not subscribe to internet access service even when it is available. Many consumers who are not online do not understand how doing so can be helpful or relevant to their daily lives. According to a recent NTIA report, for example, the top reason households gave for not using the Internet was that they had no need or no interest in going online. NTIA Report: DIGITALLY UNCONNECTED IN THE U.S.: Who's Not Online and Why? September 28, 2016, available at <https://www.ntia.doc.gov/blog/2016/digitally-unconnected-us-who-s-not-online-and-why>; last checked August 7, 2018. The better route for increasing internet service adoption is through programs aimed at the reasons for non-adoption, not by changing the criteria to determine which areas need funding to incent providers to deploy internet service in the first place.

time-consuming and unnecessarily burdensome due to the granularity and the amount of data needed. The test that the Legislature chose, which turns simply on whether at least one provider offers 6/1 internet service anywhere in a census block, is much more straightforward.

Fifth, and finally, the issue raised by the July 11 Ruling, namely that some census blocks may have internet service available in only a portion of their area, is currently being addressed at a national level. The National Telecommunications and Infrastructure Administration (“NTIA”) recently noted this same issue as one of the reasons it issued a notice and request for comments as part of improving the national broadband availability map, with part of the intent being to identify rural areas with insufficient broadband capacity.⁷ As the mapping of internet service availability improves through NTIA’s efforts, the Commission may be able to rely on those improvements as well, while still abiding by the Legislature’s focus on availability rather than subscribership for purposes of the CASF Broadband Infrastructure Account.

2. Challenge Process for CASF Applications

The July 11 Ruling asks for comments on what the process should be for challenging whether the census blocks listed in a CASF grant application are eligible for CASF funding. In particular, the Ruling asks for comments on what triggers should be used to start and end the challenge process and whether the Commission should create a single definitive list of CASF-eligible census blocks prior to applications being submitted each year.⁸

As discussed in its prior comments,⁹ AT&T proposes that the Commission create a single, definitive list of CASF-eligible census blocks in advance of the deadline for submitting CASF applications each year so that all interested parties can rely on that list in preparing their applications. All challenges to the eligibility of any census block would be addressed during the creation of that list, with 60 days to prepare challenges and 60 days to evaluate challenges.¹⁰

⁷ 83 Fed. Reg. 24747-49 (May 30, 2018).

⁸ July 11 Ruling at 4.

⁹ AT&T Phase II Opening Comments at 9-11 (Apr. 16, 2018).

¹⁰ *Id.* at Att. 1.

This investment of time and effort early in the process would pay dividends later by making the overall review and approval process simpler once the list of eligible census blocks is finalized. Also, in order to have a single uniform process, the steps and timeline for the annual process would not vary based on the technology that the bidder proposed to deploy. In a nutshell, AT&T's proposed process would work as follows:

- a. At least 90 days before the CASF grant application deadline, the Commission would publish a list of presumptively eligible census blocks (CBs), identified by GEOID, identifying all low-income and high-priority CBs, based on the most recent publicly available FCC Form 477 data, prior CASF grant awards, any CASF Rights of First Refusal, CBs awarded funding through the upcoming CAF II auction, and the locations that providers identified as having deployed 10/1 internet access pursuant to CAF;
- b. Within 60 days, interested providers could do any of the following:
 - i. Demonstrate that there is no \geq 6/1 internet access in additional CBs that they believe should be added to the eligible list.
 - ii. Challenge the eligibility of any census block that the Commission identified as eligible by submitting data and evidence to show that \geq 6/1 internet access is available in presumptively eligible CB(s). To demonstrate the existence of 6/1 service, providers may use a speed performance testing methodology approved by the FCC for CAF purposes or the other sorts of evidence specified by Staff in Appendix C to the Amended Scoping Memo (§ 1.13) (other than CalSPEED).
 - iii. Exercise their CASF right of first refusal and submit the necessary support.
- c. Within 60 days after the deadline to file challenges to the list of presumptively eligible CBs, the Commission would issue the final list of eligible CBs by GEOID, identifying low-income and high-priority CBs. This list would not be subject to later challenge.

Use of a definitive list of eligible census blocks is important because preparing a CASF grant application is a time-consuming process. Before undertaking such a task, it is helpful to applicants to know that the census blocks included in the project have already been deemed eligible and that they can include them without fear of a challenge. That would simplify the

process of creating bids and evaluating applications, thereby increasing efficiency once the list of eligible census blocks is in place. It also could promote the submission of more applications.

The July 11 Ruling asks what information should be required to challenge the eligibility of a census block. As noted above, the information would be that proposed by Staff in Section 1.13 of its Appendix C, except for CalSPEED test results. Rather than CalSPEED, parties should use one of the speed testing methods the FCC adopted in July 2018, subject to any changes the FCC may make as time goes on.¹¹ Importantly, a challenger should *not* have to prove anything regarding the “household subscription rate”¹² in a census block because, as discussed above, the subscription rate is irrelevant under AB 1665 and not to be considered in determining the eligibility of a census block. Of course, proof of actual subscribers to 6/1 service would be permissible to show that the census block is *not* eligible, since that would be one way of proving the availability of 6/1 service.

B. Prioritizing Projects and Areas to Support

Item 2 in the July 11 Ruling asks a series of questions about whether and how to prioritize different types of projects or areas for CASF funding.¹³ As noted previously, AT&T’s position is that there is no need to adjust the application or award process or to develop special procedures or tracks for prioritized projects. Rather, the most straightforward and effective way to grant priority to certain types of projects is to allocate them more points in the scoring process that is used for all proposals each year.¹⁴ That would simplify the process by allowing all applications to be evaluated and scored together using a uniform set of criteria, while still recognizing, via scoring, that some types of projects are entitled to special consideration.

¹¹ AT&T opposes the use of CalSPEED test results for the reasons set out in parts III.D and V.C of its Phase II Opening Comments. Rather, AT&T recommended using whatever internet service speed test method the FCC adopts. AT&T Phase II Opening Comments at 13-14, 30-32. The FCC recently adopted speed testing requirements for CAF in *Connect America Fund*, DA 18-710, WC Docket No. 10-90 (rel. July 6, 2018). Note that parties may yet seek clarification or modification of that ruling.

¹² See July 11 Ruling at 5.

¹³ July 11 Ruling at 5.

¹⁴ AT&T Phase II Opening Comments at 17-18, 23.

1. Percentage of Request to Be Funded

One issue that arose at the July 25, 2018 workshop that followed from the July 11 Ruling was whether grant awards should cover 100% of the applicant's requested support or some lesser amount. Staff, for example, proposed funding 60% of the requested support, with possible increases based on certain factors.

As explained in AT&T's prior comments, grants should be for the full amount of a winning applicant's requested support for a number of reasons, and doing so should promote more participation in the CASF program.¹⁵ The Commission should recognize that areas without 6/1 or better internet service today are likely to be among the most expensive and/or otherwise difficult to serve, compared to areas that already have such service. Private sector service providers are in the best position to be able to identify how much support they need to make sustainable internet service available in these areas. When an applicant submits a proposal for CASF funding, it is in effect telling the Commission that it will be able to do the project for the amount requested. If applicants know that they can only expect much less, such as 60%, it could distort the application process.

By contrast, AT&T's proposal for awards in the amount of 100% of the requested support, when coupled with its proposal for an annual competitive application process, would create a strong incentive for providers to submit applications that keep their requested support low. AT&T's recommended point distribution weights the lowest cost to the CASF program per location most heavily relative to other criteria, providing an incentive for providers to request the least amount of support they believe they reasonably need to deploy 10/1 or faster internet service to the areas covered by their applications. Further, if all the applications are submitted at the same time each year and ranked against one another, all applicants in that year would be competing against one another for the most attractive (highest scoring) proposal. Providers therefore would have an incentive to request the least amount of support reasonable (and, accordingly, to use the most efficient technology suitable for the service). Accordingly, making

¹⁵ *Id.* at 25.

grant awards in the amounts requested by winning applicants, in the context of AT&T's application and award process would introduce a new discipline into the process that would force applicants to make only their most cost-efficient proposals or risk receiving no funding at all.

2. Areas to Prioritize

The July 11 Ruling asks for comment on “[w]hich census blocks, census tracts or communities should be prioritized by the Commission?” and refers to two examples of previous approaches to prioritization included in Resolution T-17443 (approved by the Commission 6/26/14) and in the High Impact Analysis developed by Staff and included in the Supporting Materials for the May 25, 2017 CD Staff Workshop on CASF Reform.¹⁶ The Ruling asks whether the Commission should use these or similar approaches and whether there are any other communities that should be prioritized.

Consistent with the statute, priority should be given to those areas that currently have either no internet service or only dial-up internet service. Public Utilities Code § 281(b)(2)(B) states that the Commission should “[g]ive preference to projects in areas where Internet connectivity is available only through dial-up service that are not served by any form of wireline or wireless facility-based broadband service or areas with no Internet connectivity.”¹⁷ AB 1665 does not list any other areas to receive such preference under the Broadband Infrastructure Grant Account. If areas with no internet service or only dial-up internet service, and only those areas, are defined as “high priority,” they would be prioritized by being granted up to 10 extra points under AT&T's proposed revisions to the scoring process, as discussed in its Opening Comments.¹⁸ (AT&T also recognizes that low-income areas receive special consideration in the context of broadband adoption programs and line extensions under Pub. Util. Code §§ 281(d)(5)(B)(i) and (j)(5)).

¹⁶ July 11 Ruling at 5.

¹⁷ Low-income areas are mentioned for preference in line extension grants and grants from the Broadband Adoption Account and Broadband Public Housing Account.

¹⁸ AT&T Phase II Opening Comments at 23-24.

3. Treatment of Prioritized Areas or Communities

The July 11 Ruling next asks for comment on how the Commission should treat areas defined as priorities, such as whether priority areas should be eligible for expedited review or receive higher funding levels or percentages.¹⁹ As discussed in AT&T's prior filings, AT&T's position is that there should be no separate application or review process for low-income or high-priority areas. Rather, proposals for such areas should be competitively evaluated at the same time and as part of the same process as all other proposals. Differentiation would occur by granting extra points in the scoring process for proposals with certain characteristics.

C. Promoting Access to Broadband in Areas Adjacent to CAF II Areas

Item 3 of the July 11 Ruling asks for comment on how the Commission can incent CAF II providers to build beyond their CAF II commitments to the FCC.²⁰ For example, the Ruling asks whether the Commission should provide an expedited review process to approve supplemental grants to expand CAF II projects or adopt a separate process or set-aside of funding for these supplemental builds.

The FCC's CAF II rules provide meaningful incentives and penalties regarding timely completion of a CAF II provider's service availability obligations,²¹ and carriers are required to report to the FCC if they are not meeting their availability milestones.²² The best way to incent providers to build out *beyond* their CAF II area into adjacent areas is not to develop separate procedures under the CASF program, but rather to make participation in the CASF program as attractive as possible in a manner that complements the CAF and leverages CAF requirements where possible. As demonstrated by the high degree of voluntary provider participation in the CAF II program, CAF has proven to be an effective framework to encourage private sector providers to address internet service availability needs. Using rules patterned after CAF rules

¹⁹ July 11 Ruling at 5.

²⁰ *Id.*

²¹ Frontier Phase II Comments at 8-9 (Apr. 16, 2018).

²² 47 C.F.R. §§ 54.316, 54.310.

also would allow carriers to use the existing products, back office systems, and reporting processes, developed to satisfy CAF requirements, to meet their CASF obligations.

In addition, AT&T's prior Comments and Reply Comments include several suggestions for building on Staff's Appendix C to make the CASF program more attractive, such as 100% funding of amounts requested for projects, a streamlined application process based on a single definitive list of eligible census blocks, reduced reporting requirements, and monthly payments during a project. This framework is designed to allow all providers, whether participating in CAF II or not, to make rational business decisions on whether to participate, in light of the required service obligations, administrative requirements, and funding available. This approach has led to the high participation rate in CAF.

Regarding whether CASF grants should be tied to the release of CAF II plans, the fact is that the plans of CAF II providers may well change and evolve over time. Indeed, the FCC does not require participating providers to identify in advance where they will deploy. They are only required to identify, after the fact, the locations in eligible census blocks to which they have deployed and/or are maintaining internet access pursuant to CAF.²³ In fact, the technical feasibility of deploying in an area may prove, upon closer inspection, to differ from preliminary estimates and analyses. For example, it may turn out that sufficient backhaul service in an area is not available or is prohibitively expensive. Or it might be more costly to deploy fiber to an area due to its geologic composition or natural barriers (water, rocky areas, etc.) or other barriers (railroads, bridges, etc.). In the case of wireless technologies, spectrum availability limitations may limit a provider's ability to deploy service to a particular area, as could the lack of available property for cell siting or insufficient space at existing cell site locations.

These issues are not static and can change over time. In most instances, therefore, the only time when a CAF II provider could be certain it would not deploy to a census block in its CAF II area would be when its time to build had expired. Faced with such uncertainty, providers

²³ See AT&T Phase II Reply Comments at 26-27 (May 1, 2018).

should not be forced to choose between either prematurely abandoning their ability to build in CAF II census blocks to satisfy their CAF II obligations, on the one hand, or stating that they intend to build, on the other. This is particularly so in light of the fact that the FCC does not impose any such advance prognostication obligation upon CAF recipients.

In addition, CAF II providers must deploy and/or maintain internet service to specific numbers of locations in each state for which they accepted CAF II support (and are subject to significant penalties if they fail).²⁴ CAF II providers therefore may need to retain census blocks until late in their CAF II service term in case they need to build out those blocks to meet the targets. Price-cap carriers that receive CAF II funding are not required by the CAF rules to specify the census blocks/locations to which they do or do not plan to deploy, and there is no need for such a requirement here, which would erect obstacles to timely CAF deployments, and therefore, seems contrary to California's efforts to encourage the expansion of internet availability into unserved areas.

Finally, turning to the question about balancing the interests of CAF II providers to build to the areas they choose and the interests of competitors in building out to those same areas,²⁵ AB 1665 already provides the answer. As specified there, the Legislature struck a balance by requiring competing carriers to wait until after July 1, 2020, or at least until a CAF II provider notifies the Commission that it has completed its deployment in a census block, before a

²⁴ 47 C.F.R. § 54.320. For example, in California, by December 31, 2020, price cap carriers must deploy and/or maintain 10/1 internet service to a total of 231,835 locations in eligible census blocks. Of these, AT&T must deploy and/or maintain 10/1 internet service to 141,540 locations; Consolidated, to 71 locations; Frontier, to 12,822 locations, and Verizon, to 77,402 locations (Verizon sold its wireline operations to Frontier in April of 2016). See FCC News Release, State, County and Carrier Data on \$9 Billion, Six-Year Connect America Fund Phase II Support for Rural Broadband Expansion (Sept. 15, 2015), and accompanying attachments, specifically, attachment labeled DOC-335269A5, a hyperlink to which is included in the text of the press release. The press release and attachment are available at <https://www.fcc.gov/document/connect-america-fund-phase-ii-funding-carrier-state-and-county>; and https://apps.fcc.gov/edocs_public/attachmatch/DOC-335269A5.xlsx (last checked Aug. 7, 2018).

²⁵ See July 11 Ruling at 7 (§ 3(d)).

competitor can bid on that census block.²⁶ Regardless of whether others might agree with that balance, it is required by the statute and cannot be modified here. That being said, nothing prevents CAF providers from voluntarily informing the Commission when they decide they will not build out a particular census block in their CAF II area. Once a CAF provider voluntarily reports such a census block to the Commission, that census block can come back into consideration for all providers in the next application cycle when the Commission is creating its single list of CASF-eligible census blocks.

D. Payment Disbursement Process

Regarding the payment disbursement process for projects that receive CASF funding, AT&T proposes that grantees receive funding on a monthly basis, subject to a 20% holdback for completion of the project.²⁷ This is patterned on CAF II, in which monthly disbursements of the total support accepted began the month after providers accepted offers of CAF II statewide commitments,²⁸ although without the 20% holdback. The July 11 Ruling seeks comment on whether (i) it is possible to use a new reimbursement process and still be in compliance with the State Administrative Manual, (ii) there are other state programs that the commission could use as an example, and (iii) whether payments every two months would be acceptable.²⁹

The July 11 Ruling does not specify which portion of the State Administrative Manual might apply to the Commission's disbursement of CASF grant money. It is AT&T's understanding, however, that in the past the Commission has sought to comply with State Administrative Manual ("SAM") Section 8422.1, which deals with the submission of invoices to the State Controller's Office.

AT&T offers no legal opinion on the Commission's obligations or procedures vis-à-vis the State Controller's Office. It is far from clear, however, whether SAM Section 8422.1 would

²⁶ Pub. Util. Code § 281(d)(5)(C).

²⁷ AT&T Phase II Opening Comments at 32-34.

²⁸ 47 C.F.R. § 54.302

²⁹ July 11 Ruling at 6.

apply to the situation here. SAM Section 8422.1 is included in part 8422 of the SAM, which deals with “Purchase and Expense” claims that a state agency submits to the State Controller’s Office for the payment of “vendor[s].” A CASF grant recipient would not be providing goods or services to the Commission or to the State, so it is not clear why the procedures for that type of situation (*e.g.*, the agency paying its utility bills) would apply here.

Moreover, the Legislature directed the Commission to “develop, implement, and administer” the CASF program.³⁰ That delegation necessarily carries with it the authority to craft the different aspects of the program in a way that best serves the goals of the program, including the goal of incenting internet service providers to participate. And that discretion presumably includes establishing the procedures by which the Commission, which already decides who will get the funds, will pay out the funds that it oversees.

All that being said, even if one assumed, *arguendo*, that SAM Section 8422.1 does apply, nothing in Section 8422.1 would appear to prohibit the Commission from providing monthly or bimonthly disbursements to CASF Broadband Infrastructure Fund grant recipients, since it does not address the frequency of payments. It also appears that under Section 8422 the State Controller’s Office would seek to pay invoices submitted by agencies within 30 days, though AT&T believes that even payments issued every two months would be a significant improvement over the current system.

If the Commission adopts AT&T’s proposal for monthly or bimonthly payments over a 30-month period (totaling 80% of the total grant amount, with a 20% holdback)³¹ the question arises of how the provider will request payment each month (or two). AT&T suggests that payment details could be established in the Resolution or whatever other document is used to memorialize the details of the grant award. AT&T also proposes that grant recipients present invoices to the Commission in a form like the sample invoice provided as Attachment 1 here, so

³⁰ Pub. Util. Code § 281(a).

³¹ See AT&T Phase II Opening Comments at 33-34; *id.* at Att. 1, p. 2.

that the Commission has an invoice on which it can rely for each disbursement. It would be helpful to providers if the Commission would specify that invoices in this or a similar form will be acceptable for the Commission's purposes as the administrator of the CASF program.

E. CASF Funding for Middle-Mile Infrastructure

Public Utilities Code § 281(d)(5)(B) states that, in order to be eligible for a Broadband Infrastructure Fund grant,

[a]ll or a significant portion of the project [must] deploy[] last-mile infrastructure to provide service to unserved households. Projects that only deploy middle-mile infrastructure are not eligible for grant funding. *For a project that includes funding for middle-mile infrastructure, the commission shall verify that the proposed middle-mile infrastructure is indispensable for accessing the last-mile infrastructure.* (Emphasis added).

Item 5 in the July 11 Ruling asks for comment on a series of questions regarding how to determine whether middle-mile infrastructure is “indispensable” to a CASF-funded project.³²

As reflected in Section 281(d)(5)(B) of the Public Utilities Code, a key concern for the Legislature is that middle-mile infrastructure not be funded unless it is used to reach last-mile infrastructure and, therefore, to make retail internet service available to end-users. That is why Section 281(d)(5)(B) prohibits funding for projects that “only deploy middle-mile infrastructure.” With that point in mind, AT&T proposes that middle-mile infrastructure be deemed “indispensable” if the middle-mile infrastructure included in the application consists of facilities and/or functionality that the provider would need to deploy or otherwise secure and in the absence of which the provider would not be able to deliver (1) 10/1 or better internet service to end-users in an eligible project area or (2) the speed, quality, and price levels that the applicant seeks to provide.

This approach recognizes the importance of allowing providers to decide for themselves the extent to which they need to deploy or otherwise secure middle-mile functionalities and the

³² July 11 Ruling at 7 (“How should the Commission verify that a middle-mile build included in a proposed project is ‘indispensable’ to that project, as required by statute?”).

extent to which they need to seek CASF funding in order to make retail internet service available to end-users. Indeed, there should be no significant risk that applicants would seek funding for middle-mile infrastructure unless that infrastructure is truly necessary to deliver the required retail internet service, because the structure of the CASF program itself, with the modifications proposed by AT&T, creates financial incentives to minimize requested funds. In particular, AT&T recommends that the point system for scoring CASF applications give the most weight (30 points) to applications seeking the *least* funds per potential household.³³ Thus, if a CASF applicant proposes to use something other than the most cost-effective and efficient technology solutions available (whether obtained from third parties or self-provisioned) the applicant risks not being awarded any funding at all. CASF applicants therefore would have financial incentives to minimize the funds they request per-household, and to include in their applications additional costs for middle-mile infrastructure and/or functionality only when necessary.

In addition, it is critical to remember that providers themselves are in the best position to determine whether any existing middle-mile infrastructure is feasible and cost-effective for use in their project configuration. Service providers make technology/network architecture decisions of this nature every day in extending and modifying their own networks in order to make retail services available to end-user customers. They must do so in a manner that maximizes efficiencies and minimizes costs if they are to remain viable commercial enterprises in today's hypercompetitive communications environment. Forcing a provider to alter its plans based on the perceived viability of other middle-mile infrastructure would ignore the provider's ability to best determine its own business needs in light of its own existing network architecture. Providers are capable of determining between themselves whether and when it makes sense to enter into commercial network arrangements, and leaving it to providers to decide on a business-to-business level whether it makes sense for the applicant to lease access to middle-mile infrastructure and/or functionalities from another provider, given all of the service, technological,

³³ AT&T Phase II Opening Comments at 24.

and financial considerations, and other commitments and obligations that go along with a CASF-funded project, will result in the most efficient funding requests and use of infrastructure.

Any other approach – such as having the Commission decide whether another entity’s middle-mile infrastructure is “near” enough³⁴ to the proposed project or whether the terms of access that the other entity offers are reasonable³⁵ – would embroil the Commission in second-guessing the applicant’s technological, engineering, and financial choices, which could create a disincentive for participating in the program, which would only have the effect of delaying the availability of internet service to people who are without it.

For these reasons, the Commission should not adopt any approach that interferes with each provider’s exercise of its business, financial, and technical judgment and ability to determine the most cost-effective approach for its proposed project area. No entity knows an applicant’s network architecture and puts and takes related to that architecture, the technical requirements of that architecture, and the cost-effectiveness of potential solutions as well as the applicant. A provider should not be forced to rely on renting less desirable facilities/functionalities from others or on any particular network arrangement when the provider is committing to offer internet service at certain speeds, because such reliance lessens control over the service by inserting a middleman between the provider’s last-mile facilities and core facilities.

F. Line Extensions

Item 6 asked several questions regarding the components of and costs for line extensions. AT&T focuses on questions c. and d. Question c. asks about fixed wireless line extensions.

³⁴ July 11 Ruling at 7 (“If middle-mile infrastructure already exists near the proposed project area, under what circumstances may an applicant build its own middle-mile infrastructure? If middle-mile infrastructure already exists near the proposed project area, should there be a limit on how much infrastructure may be built?”).

³⁵ *Id.* (“If middle-mile infrastructure already exists near the proposed project area, should there be a limit on how much infrastructure may be built? (*e.g.*, 10 miles, 5 miles, etc.) For purposes of grant funding, is leasing or purchasing middle-mile facilities for terms beyond five years (*e.g.*, IRU for 20 years) allowable or even preferred overbuilding new infrastructure?”).

Although it refers to it as a service extension rather than a line extension, AT&T does offer what might be characterized as a line extension in association with its fixed wireless internet service by placing an antenna farther away from the home in order to improve reception when mounting the antenna on the home is infeasible, and then connecting that antenna to the home using a longer than usual Ethernet cable. One-time charges like these, that a provider would charge an end-user customer in the normal course of business (not just to locations deployed pursuant to CASF), should be eligible for reimbursement by the CASF program. AT&T's charge falls well within the \$300 limit per wireless extension connection proposed by Race Telecommunications.

Item 6(d) asks whether a service provider should be able to apply for remuneration for a line extension on behalf of the property owner that needs a line extension. AT&T supports allowing, but not requiring, an internet service provider to apply for a fixed line extension connection on behalf of the property owner. AB 1665 makes clear that “an individual household or property owner shall be eligible to apply for a grant to offset the cost of connecting household or property to an existing or proposed facility-based broadband provider.” Thus, property owners certainly can apply for remuneration themselves, but nothing prevents the Commission from allowing service providers to apply on behalf of property owners, which may also make the process easier for those property owners.

Attachment 1

CASF PAYMENT DISBURSEMENT REQUEST: AT&T CALIFORNIA
(Grant Recipient)

1. Name of Project	
2. CPUC Resolution	
3. Project Number	AT&T 2018- XXXX

Description of Project

Provide description of approved CASF Project

Description of Reimbursement/Payment Process

In accordance to CPUC Resolution _____ approving CASF Project (Project Number), payments of 80% of the total CASF award will be disbursed to the award recipient in 15 equal bi-monthly installments, with the final 20% of the total award being dispensed after the provider submits its project completion report. Periodic invoicing will be submitted to the Commission no later than the start of each installment period and the CPUC shall pay said installments within 60 days from the start of the installment period.

Disbursement/Payment Schedule

Installment/ Invoice Number	Invoice Submitted	Payment Due Date	Payment Received
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
FINAL			

TOTAL CASF Grant Award: _____

Installment/Invoice Number: _____

Issue Date:

Bill To:

Name

Address

Please mail payment to:

Name

Address

Description: Project Name/Number

Amount: _____