

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

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

Rulemaking No. 12-10-012

**COMMENTS OF THE CENTRAL COAST BROADBAND CONSORTIUM ON THE
PROPOSED DECISION IMPLEMENTING THE CALIFORNIA ADVANCED SERVICES
FUND INFRASTRUCTURE ACCOUNT REVISED RULES**

Stephen A. Blum
Executive Team Member
Central Coast Broadband Consortium
3138 Lake Drive
Marina, California 93933
steveblum@tellusventure.com

29 November 2018

Table of Contents

Table of Authorities	iii
I. Introduction	1
II. The Proposed Decision is Well Balanced and Proposes a Workable Program	1
III. The Proposed Decision Contains a Potential Technical Error Regarding Middle Mile Facilities	2
IV. The Proposed Decision Improperly Prejudges AT&T's Submission of False Data	3
V. The Proposed Decision Could be Read as Denying Applicants Due Process	4
VI. Staff Should be Allowed Greater Flexibility in Managing Application Windows	4
VII. Conclusion	4

Table of Authorities

1. California Public Utility Commission Rules of Practice and Procedure.
2. California Public Utilities Code.
3. ISO/IEC 7498-1:1994 Information technology – Open Systems Interconnection – Basic Reference Model: The Basic Model.
4. FCC Form 477 Instructions, published 5 December 2016.

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

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

Rulemaking No. 12-10-012

**COMMENTS OF THE CENTRAL COAST BROADBAND CONSORTIUM ON THE
PROPOSED DECISION IMPLEMENTING THE CALIFORNIA ADVANCED SERVICES
FUND INFRASTRUCTURE ACCOUNT REVISED RULES**

I. Introduction

Per California Public Utilities Commission (CPUC) Resolution T-17529, the Central Coast Broadband Consortium (CCBC) is the California Advanced Services Fund (CASF) consortia grant recipient representing Monterey, San Benito and Santa Cruz Counties. The CCBC is a party to Rulemaking 12-10-012 and respectfully submits these comments in response to the Assigned Commissioner's Proposed Decision Implementing the California Advanced Services Fund Infrastructure Account Revised Rules, dated 9 November 2018 (PD).

II. The Proposed Decision is Well Balanced and Proposes a Workable Program

The CCBC thanks Staff, Administrative Law Judges and the Assigned Commissioner for drafting an infrastructure development program that is largely as workable as recent California legislation allows. We support the PD and urge its adoption by the Commission. We also respectfully suggest some relatively minor changes to the 9 November 2018 draft.

III. The Proposed Decision Contains a Potential Technical Error Regarding Middle Mile Facilities

The PD states¹ "for example, the applicant, in its application, should include documentation demonstrating that it requested specific data and/or transport services from a provider and that provider was not able to meet that request and offered no other alternative". This language could be read as limiting "indispensable" middle mile resources to only "data and/or transport services", i.e. Layer 3 and higher and Layer 2 services, respectively, as defined by the Open Systems Interconnection model². There may be circumstances where Layer 1 middle mile facilities, such as dark fiber, are indispensable to a project. In order to remove this ambiguity, we respectfully suggest changing the sentence to read "specific data, transport and/or dark fiber services".

Because the proposed decision offers this sentence merely as a possible example of an assertion an applicant might make and places it in the context of a policy that will evolve "on an individual basis until [Staff] has a sufficient record to draft a resolution to recommend modifying these rules", making this modification does not obligate the Commission to accept such an assertion as proof of indispensability. Nor does it obligate an incumbent service provider to offer dark fiber services on a routine basis. The modification would only remove a potentially problematic technical ambiguity and allow Staff to develop a record on a technology neutral basis.

¹ Proposed Decision Implementing the California Advanced Services Fund Infrastructure Account Revised Rules, date 9 November 2018 (Proposed Decision), at 30.

² ISO/IEC 7498-1.

IV. The Proposed Decision Improperly Prejudges AT&T's Submission of False Data

The proposed decision states³:

The CCBC disagrees with AT&T's assertion that the Commission should solely rely on deployment data submitted on FCC Form 477 to determine eligibility, citing inaccuracies in AT&T's deployment data, most likely due to miscoding in certain census blocks...

It is clear that, in certain instances, the deployment data submitted by providers overstates broadband availability and that the submitted data is inaccurate in other ways, including the miscoding identified by the CCBC.

In our reply comments dated 1 May 2018⁴, we did not attribute this false data to miscoding.

AT&T has established "AT&T Fiber" as an "umbrella brand" which includes technology such as "the former AT&T GigaPower network" which does not, in all regards, meet the Form 477 definition⁵ of "fiber to the home or business end user"⁶. It is reasonable to posit a connection between AT&T's brand positioning and its Form 477 submissions.

We do not assert that AT&T's submission of false data is due to a deliberate branding decision because *inter alia* the instant proceeding is not the proper forum to accuse AT&T of violating the Commission's Rules of Practice and Procedure or of other violations of law and regulations. Likewise, it would be improper for the Commission to offer an opinion regarding the motive for AT&T's submission of false data at this time. We respectfully request that the references to miscoding be deleted.

³ PD at 11.

⁴ Reply Comments of the Central Coast Broadband Consortium on Phase II Staff Proposal, 1 May 2018.

⁵ FCC Form 477 Instructions, 5 December 2016 at 30.

⁶ AT&T press release, "AT&T Plans to Expand Our Ultra-Fast Internet to 11 More Metros, Reaching 67 Major Metros, Including 45 by End of This Year", 4 October 2018, downloaded on 28 November 2018.

V. The Proposed Decision Could be Read as Denying Applicants Due Process

In what we believe is an inadvertent ambiguity, the proposed decision states⁷, in the context of a possible "second shortened application round" that "any applications submitted during this special round receiving a complete and timely challenge are automatically denied". We respectfully note that a challenge might be "complete and timely" as to form while also containing false content. This language could be interpreted as allowing an incumbent to unfairly block an application, thereby denying an applicant due process, simply by filing lawyerly composed and formatted paperwork. We respectfully suggest that the phrase be amended to read "complete, timely and correct".

VI. Staff Should be Allowed Greater Flexibility in Managing Application Windows

We further note that the possibility of a second application round is offered on a provisional and optional basis. We applaud this flexibility and express our confidence in Staff's judgement regarding the need for additional application rounds. We suggest that Staff be allowed greater discretion in managing this optional application window, specifically by removing the 15 May deadline and allowing more than one additional round if Staff deems it necessary. The proposed decision properly and meritoriously characterises the revised infrastructure grant program as a work in progress in some respects. It would serve the public interest to allow Staff greater flexibility to adjust application windows as this work progresses.

VII. Conclusion

The CCBC thanks Staff, the Administrative Law Judge and the Assigned Commissioner for a well balanced proposed decision, and respectfully requests that it be modified as suggested herein and swiftly approved.

⁷ PD at 56.

Date: 29 November 2018

Respectfully Submitted,

Stephen A. Blum

/s/ Stephen A. Blum

By: Stephen A. Blum
Executive Team Member
Central Coast Broadband Consortium
3138 Lake Drive
Marina, California 93933
steveblum@tellusventure.com