

**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 PHASE II STAFF PROPOSAL**

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

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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 regarding the Staff Proposal for Phase II of the above proceeding, as attached to the Amended Scoping Memo and Ruling of Assigned Commissioner dated 14 February 2018 as Appendix C, (Phase II Proposal).

I. Staff's Phase II proposal for changes to the infrastructure account program is generally well designed and reflects experience to date.

Overall, the changes proposed to the infrastructure grant program represent significant improvements. For example, the recommendations regarding project summary, median household income, project eligibility, performance bonds, project viability, expedited ministerial review for low income communities, semi-annual reporting, payments, and execution and performance take into account lessons learned from previous rounds of the CASF infrastructure grant program and offer workable solutions. On the whole, the CCBC supports the proposed

changes to the infrastructure grant program, with some clarifications and additional elements recommended, as described below.

II. Some elements of the Phase II proposal should be clarified.

The CCBC recommends the following clarifications to the proposed infrastructure grant program changes:

Project eligibility. Recommend changing “or other public feedback” to “or other public feedback or other verifiable data gathered by the applicant”. In some cases, it might be the applicant, rather than members of the public who conduct CalSPEED tests or perform site surveys or conduct other field research that disproves service claims previously submitted by providers. Such data should be objective and, preferably, quantitative in nature and submitted in a form that is verifiable by staff. CPUC rules regarding obligations to provide complete and truthful information should, of course, be fully enforced.

Project viability. Applicants should be required to provide to staff, upon request, details of the methodology and all primary and other supporting data for projected revenues and other forecasts.

Request for proposal (RFP) contracting process. An RFP is one of many useful tools for identifying providers who can serve high priority areas. However, it is a tool that should not be used exclusively, and when it is used the process of publishing, receiving and evaluating responses should be conducted in as short a time as possible. A protracted process will cause delays and provide a disincentive for respondents as well as potential applicants who might consider other grant application pathways. The experience of CCBC members shows that eight

weeks is a sufficient amount of time for respondents to submit proposals, and two weeks is a sufficient amount of time to carry out the initial screening and notify respondents if they've qualified for further review or not. The remaining review period should comply with CASF deadlines, as further discussed below in Section III below. Additionally, RFP specifications should provide incentives to respondents to propose higher levels of service, as described in Section IV below.

Right of first refusal. The right of first refusal process should not be a means for incumbent providers to block competition. Extensions beyond those required by law should not be granted, failure to fully complete promised upgrades within the specific time should result in fines or other punitive penalties, and any such failure should render the provider involved ineligible for participation in future right of first refusal windows.

Project challenges. The 21 calendar day limit for project challenges should be stated as a final limit. In other words, once the 21 day window closes, no incumbent provider may challenge an application or draft resolution on the basis of existing service. Incumbent providers have abused the challenge process in the past and continue to do so. The challenge process should be an expedited means for incumbent providers to only provide quantitative information to staff about currently available service. It should not be an opportunity to delay or derail independent projects. CPUC rules regarding obligations to provide complete and truthful information should be fully enforced.

III. Submission and selection timelines

The staff Phase II proposal makes no mention of the current 106-day deadline for evaluating applications and approving resolutions for those that qualify for grants. This deadline was established in Decision 12-02-015 and has been ignored ever since. The staff Phase II proposal correctly identifies the lengthy application review process as a problem, but does not provide any measures that are binding upon staff to encourage meeting the 106-day deadline. The lengthy delays, in some cases of more than two years, are a barrier to broadband infrastructure deployment and thwart CASF goals. The Commission should reaffirm the 106-day deadline and take additional steps to insure staff compliance. These steps may include reducing the redundant and recursive levels of review carried out by responsible staff and supervisors, simplifying and standardizing review processes (with corresponding simplification of application procedures if necessary), giving applicants direct recourse to the Executive Director if deadlines aren't met, and expanding staff's scope for ministerial approvals.

IV. Matching fund requirement

Assembly bill 1665, as well as past legislation, requires CASF infrastructure grants to be made on a technologically neutral basis. However, there is nothing in the applicable legislation which requires grants to be made on a service-neutral basis. In fact, AB 1665 states:

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 legislation requires the Commission to determine the level of project funding on a case by case basis, however this requirement does not preclude the commission from establishing criteria for how those determinations will be made. In effect, the Commission currently follows this process: presumptive funding levels – i.e. 60% for projects in underserved areas and 70% for projects in unserved areas – are set by Decision 12-02-015, but the Commission has used its discretion to approve other funding levels where appropriate.

The CCBC recommends that the Commission continue this practice and add one further criterion for determining the level of funding: the service level that a proposed project is capable of delivering and that the applicant commits to offering and fulfilling for at least two years following project completion.

In the Connect America Fund II auction phase¹, the Federal Communications Commission (FCC) has established “technology-neutral service tiers” and other service level metrics that will determine project eligibility and, effectively, the level of funding. Although the auction mechanism used by the FCC is different from the CPUC’s CASF program administration procedures², the weighting used by the FCC for the various speed tiers can be applied to funding level decisions made by the CPUC. The CCBC recommends setting a base funding level of 80% of project costs and applying the FCC’s weighting criteria as follows:

¹ FCC Public Notice 18-6 Release February 1, 2018, Connect America Fund Phase II Auction Scheduled For July 24, 2018, Notice And Filing Requirements And Other Procedures For Auction 903, AU Docket No. 17-182 WC Docket No. 10-90.

² Because the FCC is conducting a reverse auction, the weighting criteria is applied in an inverse manner relative to the CASF grant determination process.

Table 1 – Recommended Service Level Weighting				
Performance Tier	Speed (download/upload)	Monthly usage allowance	FCC Weight	CASF Funding Level
Minimum	z 10/1 Mbps	z 150 gigabytes (GB)	65 (out of 100)	28%
Baseline	z 25/3 Mbps	z 150 GB or U.S. median, whichever is higher	45	44%
Above Baseline	z 100/20 Mbps	z 2 Terabytes (TB)	15	68%
Gigabit	z 1 Gbps/500 Mbps	z 2 TB	0	80%
Latency				
Low latency	s 100 ms		0	Funding level as determined by performance tier
High latency	s750 ms and Mean Opinion Score of z4		25	75% of funding level as determined by performance tier.

The FCC’s definition of Baseline service (25 Mbps download and 3 Mbps upload speeds) has also been adopted by the U.S. Department of Agriculture³ for the broadband grant program managed by the Rural Utilities Service. Although the legislature set 10 Mbps download and 1 Mbps upload speeds as the minimum for the CASF infrastructure program, AB 1665 also declares that “there is a need for world-class broadband infrastructure throughout California to support these major infrastructure investments, and thereby to protect lives, property, and the environment” and that “it is the intent of the Legislature that California be a national leader and globally competitive in the deployment and adoption of broadband technology and in implementing quality universal access for all residents”. The CPUC is tasked with achieving these goals and with leveraging federal funds to do it. Adopting CASF service level standards

³ Department of Agriculture Rural Utilities Service, Announcement of Grant Application Deadlines and Funding Levels, Notice of Solicitation of Applications, Federal Register Vol. 83, No. 51, Thursday, March 15, 2018.

that are, at a minimum, consistent with federal program requirements and weights is a necessity if the CPUC is to meet this obligation.

V. Treatment of CAF II areas.

Staff requests comments regarding the question: “how can the Commission incentivize existing facilities based broadband providers to build out their CAF II obligations in a timely manner?”

AB 1665 allows the CPUC to condition grants on full disclosure of “steps taken to first obtain any available funding from the Connect America Fund program or similar federal public programs that fund broadband infrastructure”. These steps include actions taken to apply for funds, as well as actions taken to fulfil any ensuing obligations. Similarly, the CPUC can condition other benefits, such as the above mentioned right of first refusal, on such disclosure. The identify of CAF II subsidy recipients is a matter of public record, and the CPUC may, and should, full and timely disclosure of build out plans and progress made to date any time such a recipient seeks benefits under the CASF program.

VI. LEP subsidy level

AB 1665 directs the CPUC to “consider requiring a percentage of the project to be paid by the household or the owner of the property”. This language does not preclude the CPUC from also requiring a percentage of the line extension to be paid by the ultimate beneficiary, “the facility-based broadband provider to which it is connected”. The CCBC recommends that a base level of 90% funding be set for applications that do not meet the income or status criteria for the

automatic 95% funding proposed by staff. This funding level should then be modified in a similar fashion to that recommended by the CCBC for the infrastructure program:

Table 2 – Recommended Service Level Weighting (LEP)				
Performance Tier	Speed (download/upload)	Monthly usage allowance	FCC Weight	LEP Funding Level
Minimum	z 10/1 Mbps	z 150 gigabytes (GB)	65 (out of 100)	32%
Baseline	z 25/3 Mbps	z 150 GB or U.S. median, whichever is higher	45	50%
Above Baseline	z 100/20 Mbps	z 2 Terabytes (TB)	15	77%
Gigabit	z 1 Gbps/500 Mbps	z 2 TB	0	90%
Latency				
Low latency	s 100 ms		0	Funding level as determined by performance tier
High latency	s750 ms and Mean Opinion Score of z4		25	75% of funding level as determined by performance tier.

Under these criteria, the matching fund percentage varies from 5% for qualifying applicants to 76% for non-qualifying applicants proposing the lowest service level (minimum speeds with high latency). The CCBC proposes that the facilities based broadband provider receiving the benefit of CASF subsidies under the line extension program be responsible for the first 5% of any matching funds, and half of any remaining matching fund requirement above 5%. However, any such requirement should not preclude the provider from voluntarily paying a greater percentage than would otherwise be required.

VII. Line extension program (LEP) eligibility.

The CCBC supports staff’s proposal regarding the use of household income levels to determine eligibility.

VIII. Line extension program obligations.

AB 1665 does not preclude the CPUC from requiring the facilities based provider who ultimately owns any infrastructure built with LEP funds to adhere to CPUC regulations. The CPUC should require such providers to abide by the all of the same requirements, including but not limited to service and price commitments, eligibility and performance requirements and standards of conduct, that CASF infrastructure grant recipients must meet. The LEP should not be structured in such a way as to allow non-compliant providers to evade the CPUC's well established standards of corporate behavior by laundering CASF funds through individuals.

IX. Consortia program.

AB 1665 limits funded consortia activities to those that "facilitate the deployment of broadband infrastructure by assisting infrastructure grant applicants in the project development or grant application process". The CCBC notes that this language permits consortia to assist applicants who wish to apply for any sort of infrastructure grant, including but not limited to U.S. Department of Agriculture, Economic Development Administration, FCC and local government programs.

Likewise, AB 1665 does not limit the type of assistance that consortia might offer. Therefore this assistance may encompass a wide range of activities, including but not limited to local policy development that establishes local grant programs or policy that assists in the project development and grant application processes, or market research that identifies opportunities.

In finalizing the parameters of the new consortia program, the CCBC recommends that the CPUC take a broad view of what activities may be funded by CASF and which kinds of grants may be pursued. Indeed, AB 1665 requires the CPUC to seek to maximize the benefit of other grant programs.

V. Conclusion.

The CCBC respectfully requests that the Phase II Proposal be modified as recommended herein and swiftly approved.

Date: 16 April 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