

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

Order Instituting Rulemaking to Consider)
Modifications to the California Advanced) Rulemaking No. 12-10-012
Services Fund.)

**COMMENTS OF THE CALIFORNIA CENTER FOR RURAL POLICY, RURAL
COUNTY REPRESENTATIVES OF CALIFORNIA, UPSTATE CALIFORNIA
CONNECT CONSORTIUM AND THE NORTHEASTERN CALIFORNIA CONNECT
CONSORTIUM ON PHASE II ISSUES**

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**COMMENTS OF THE CALIFORNIA CENTER FOR RURAL POLICY (CCRP),
RURAL COUNTY REPRESENTATIVES OF CALIFORNIA (RCRC), UPSTATE
CALIFORNIA CONNECT CONSORTIUM (UCCC) AND THE NORTHEASTERN
CALIFORNIA CONNECT CONSORTIUM (NECCC) COLLECTIVELY KNOWN AS
THE “COMMENTERS” ON PHASE II ISSUES**

The California Center for Rural Policy is a research center committed to informing policy, building community, and promoting the health and well-being of the more than five million Californians living in rural and frontier communities. CCRP is the host for the Redwood Coast Connect Broadband Consortium, which covers Del Norte, Humboldt and Trinity Counties. We recognize how important broadband is to the future of rural communities, which is why since our inception we have worked to expand broadband deployment and improve broadband policy on a regional, state and national level.

Rural County Representatives of California (RCRC) provides the rural county perspective on a myriad of issues including land use, water and natural resources, housing, broadband, transportation, wildfire protection policies, and health and human services. The core of RCRC’s mission is to improve the ability of small, rural California county government to provide services by reducing the burden of state and federal mandates, and promoting a greater understanding among policy makers about the unique challenges that face California's small population counties.

The Northeastern California Connect Consortium and Upstate California Connect Consortium (NECCC & UCCC) work on improving broadband availability and performance in the rural Northern California region and accomplish this goal through supporting broadband infrastructure

expansion and project proposals, developing strategic partnerships, promoting information sharing, assessing current broadband service performance, and supporting development and implementation of local policies and broadband plans. The NECCC & UCCC consist of counties, cities, non-governmental organizations, anchor institutions and ISPs, among other local public and private partners, and serve ten rural counties: Butte, Colusa, Glenn, Lake, Lassen, Modoc, Shasta, Siskiyou, Plumas, and Tehama.

We are grateful to have an opportunity to offer comments to the Proposed Changes for Broadband Infrastructure Grant Account required by the passage of Assembly Bill 1665 (Chapter 851, Statutes of 2017):

AB 1665 Implementation Issues Not Addressed in the Scoping Memo:

Early broadband studies of the northern rural counties show a pattern of patchwork service, where smaller or more mountainous communities were either bypassed or offered very limited and costly broadband connectivity. In many places, facility-based providers often sought and received subsidies for connecting individual sites such as hospitals, schools and libraries, but did not extend services to cover low-income houses or promote economic development in those communities. This has created a patchwork of served, unserved and underserved communities which make it difficult attract service providers.

With the passage of AB 1665, many of these historically unserved communities will be ineligible for CASF funding for a project deployed by anyone other than an existing facilities-based provider until 2020, at which time the facility-based provider submits notification that it has completed, or elected not to build, its subsidized project(s) within the relevant census block. To help meet the goals set forth in AB 1665, the Commission should require that facility-based providers submit the notification set forth in Public Utilities Code section 281, subdivision

(f)(5)(C) at the earliest possible time upon completion of *physical construction of the specific infrastructure elements for which federal funds were received*, or abandonment of the subsidized project, as determined in accordance with objective standards.

Appendix C –Comments

1.1 Background Section (Page 3-4)

- Extends the date of the CASF Goal...: AB 1665 and Section 1.1 of the Background articulate the goal "to approve funding for broadband infrastructure projects that will provide broadband access to no less than 98 percent of California households in each consortia region," but do not specify how the 98% threshold is measured. The Commission should clarify that the 98% standard be based upon wireline access only, and should not count wireless or satellite access toward meeting this goal. Wireless and satellite access are often unreliable, particularly in inclement weather conditions, and will not meet the overarching goals of AB 1665.
- Requires the Commission to give preference...: In addition to the statutory preference for areas with limited or no Internet connectivity, the Commission should establish secondary preferences for underserved areas (as discussed above); for projects that provide service in excess of AB 1665 minimum standards; for projects that provide service to both unserved areas and adjacent served areas, where the existing service is unreliable; for projects that facilitate local economic development; and for projects that otherwise will demonstrably alleviate poverty in the region. This will ensure that projects funded with CASF dollars actually achieve the goals outlined in AB 1665.
- Requires the provider to provide the Commission with information to demonstrate what progress...: The definition of progress in the context of "the provider is making progress

towards completing deployment" should provide more details and parameters associated to it.

- Requiring projects eligible for grant awards to meet the following requirements...: AB 1665 and Section 1.1 of the Background require that eligible projects must "deploy infrastructure capable of providing broadband access at speeds of a minimum of 10 megabits per second (Mbps) downstream and 1 Mbps upstream." These are minimums, and the Commission may require that CASF funded projects meet higher standards where appropriate. In unserved areas adjacent to served areas with service speeds in excess of AB 1665's minimum standards, the Commission should require that the CASF funded project provide parity with the adjacent served areas to avoid perpetuating existing patterns of disadvantaged communities. The measurement (i.e., using CalSPEED or similar professional tools) of broadband speeds (10Mbps downstream and 1 Mbps upstream, and 6Mbps downstream and 1Mbps upstream) should be carried out during high peak broadband traffic hours in order to reflect actual speeds that customers will have available. Otherwise, broadband speed measurements during low peak traffic hours will not reflect actual speeds that customers will have available during popular times when users access to the Internet. In some cases, during high peak broadband traffic hours, broadband speeds reduce to just a fraction of the contracted nominal broadband speed.
- Specifies that the Commission may award grants to fund... : In the context of "to fund all or a portion of the project," the funding level criteria should be described.

1.2 Amount Available for Grants (Page 5) The Commission should refine the standards for determining whether “middle-mile infrastructure is indispensable for accessing the last-mile infrastructure. Specifically, these standards should clarify that new middle-mile infrastructure is “indispensable” when existing infrastructure is either unavailable due to the owner’s refusal to provide legally binding access commitments, or is unaffordable as determined in accordance with objective standards. There are few regulatory or market incentives for middle-mile infrastructure owners to allow other providers of last-mile serves to access their infrastructure, and CASF eligibility criteria must therefore recognize that new middle-mile infrastructure is often indispensable as a practical matter, even though existing infrastructure is in place.

Set Aside: While we applaud the staff proposal to set aside funding to benefit low income communities, the Commission [TR2] [CES3] should require that providers receiving funding from this set aside provide enforceable commitments that services provided within the low-income community will be affordable, as determined in accordance with objective standard. The Commission should further allow applicants to add underserved areas to their application to ensure viability.

1.3 Definitions (Page 6) The broadband speeds in the definitions of "unserved household", "unserved household with slow-service" and "unserved household with no service" should be measured (validated) during high peak traffic hours. Additionally, outages above a reasonable standard (to be set by the Commission) should be included in the criteria to determine the served or unserved household status.

Although AB 1665 remained silent on a definition of an underserved community we believe that staff should continue to make this important distinction, and should provide preference to projects that will improve service in underserved communities (in addition to the statutory

preference for unserved communities). We believe the definition of underserved community should match the Federal Communications Commission definition as connection speeds of at least 25 Mbps downstream and 3 Mbps upstream. It should also include communities that are at risk of outages during a natural disaster or otherwise because of a lack of route diversity.

1.4 Eligible Applicants (Page 7) Commenter would like staff to include Tribal governments as entities eligible for infrastructure grants. Tribal governments are not local government agencies, they are sovereign governments and should be called out specifically as eligible.

We believe that satellite providers should not be eligible for funding unless they are willing to agree to not have data caps or metered service.

Commenters believe local governments should be eligible to respond during the proposed RFP process for hi-priority areas.

1.6 Information Required of Applicants (Pages 8-13)

Proposed Application Item 3—Description of Applicant’s Current Broadband

Infrastructure in the Area: The commenters are concerned with the proposed staff requirement to provide information on other provider’s infrastructure within the project area., Much of this information required is proprietary and not easily available and will likely delay applications. Furthermore, existing infrastructure in the area does not always mean there is additional capacity. In our experience, ISPs and non-CPCN holders often are not able to obtain this information.

Proposed Application Item 5 --Median Income: In rural communities median income can be deceiving based on land ownership patterns. There can be significant income differences between people who own land and people who rent. We would suggest staff consider allowing

the applicant to alternatively establish that a community is low-income through the local schools' free and reduced lunch data and include this information in the application. Free and reduced lunch data is publicly reported to the state annually.

Proposed Application Item 9 – Performance Bond Relief: (Page 11) The commenters support the concept of the removal of performance bond. We believe this creates an unfair burden that only increases the cost of deployment and does not really reduce the risk of default. As the Commission states, some risk of default may need to be accepted, but to date, there have been no program defaults.

1.7 Low-Income Communities – Expedited Ministerial Review (Pages 13-14) The expedited process proposal is a positive solution. The commenters would suggest a change to allow staff to expedite unserved areas (the project serves low-income areas and/or an unserved area).

While we understand that consortia do not have a role in the grant decision-making process, the commenters would also encourage staff during the review process to seek a letter of support from regional consortia in order to ensure that CASF funding addresses local broadband priority needs and areas if the applicant hasn't already included support in the application packet.

1.8 Hi-Priority Areas – Request for Proposal Ministerial Review (Pages 14-15) The commenters believe the RFP is a positive solution to encouraging broadband deployment in hi-priority areas.

However, many of those areas are CAFII communities that cannot be included in a Request for Proposal (RFP), so the commenters would recommend that the Commission develop a process

for working with the incumbents to assure these communities are included in upgrade plans. We would suggest that the Commission also develop a process that allows public reporting of CAFII area deployment status in the hi-priority approved communities and report to the Commission progress when providing CASF updates.

1.9 Right of First Refusal (Page 15-16) Commenters believe the submission date and map update are appropriate. The standard for ROFR projects should be “shovel ready” however, in some cases, it is reasonable to grant an extension for delays in permitting or environmental review. We believe that one extension request may be reasonable. If the Commission grants an extension the reason should be publicly reported.

We believe the consequences if a provider fails to timely complete their project should include banning that provider from participating in the ROFR process for a year, and making the area not deployed eligible for CASF funding opportunities from any provider in the future. Rural communities have waited long enough for broadband deployment, and this would ensure that further avoidable delays are actually avoided.

1.10 Treatment of CAFII Areas (Page 16) The commenters believe no additional financial incentives or subsidies should be provided to existing facility-based providers in CAFII areas to meet AB 1665’s minimum service standards. Existing facility-based providers have already received substantial subsidy from the federal government to meet these standards, and CASF funds should not be used to assist providers in meeting their existing obligations. However CASF funding should be allowed to enhance service beyond the minimum CAFII requirements especially for project that will meet the current FCC standard of 25/3.

1.11 Submission and Selection of Timelines (Page 16-17) Commenters adamantly opposes staffs' suggestion of returning to an annual submission timeline. In the past this led to applicants rushing applications in before they were completely prepared and dramatically rewriting them after submission. If the staff proposal was adopted, that would mean that non-facility based applicants would only have 90 days before an existing provider could just add the area to the annual ROFR process thereby blocking potential funding.

Application should be encouraged to be as “shovel ready” as possible, not rushed to meet a deadline. Staff should have an opportunity to tell applicants that the application needs additional work and should be altered and resubmitted at any time during the year rather than wasting a lot of resources aiding applicants in rewriting applications because they were submitted under an artificial deadline.

1.13 Project Challenges (Page 17)

1.14 Scoring Criteria and High-Priority Areas (Page 18) The commenters wish to express concern that staff recommends a change to community endorsement criterion as only representing five (5) bonus points. We believe community support and consortia support should be included in the main criteria with at least five (5) points. This can be achieved by reducing the Funds Requested per Potential Customer criterion from thirty (30) to twenty-five (25) points.

[TR6] [CES7] Achieving high level community support from initial stages of CASF projects will lead to higher levels of adoption in these communities. Additionally, local community support can develop partnerships between ISPs and local governments (i.e., synergies with public works projects and access to public assets) which might result, for example, in more cost efficient

deployments and reducing the cost per customer. Applicants need not be delayed by adding letter of support to the application packets. The past CPUC staff reviewing applications have contacted consortia to gauge community support after applications have been submitted. Commenters request that a bonus point category be created for projects that meet a communities economic development needs in addition to households served. If staff and the Commission's goal is to set a priority for low income communities, these bonus points could provide additional help to lift those communities economic and job opportunities.

1.16 CEQA Payment (Page 19) Commenter support the staff recommendation covering the CEQA expenses and believe it is a positive solution to reduce financial burden in broadband infrastructure projects.

However, commenters are concerned with the continuation of the current practice of the Energy Division CEQA staff obtaining a contractor when Tribal governments receive CASF grants. We believe this does not honor tribal sovereignty.

1.17 Semi-annual Reporting and Completion Reports (Page 20): The completion reports should include attestation that all households with the project areas are offered service and minimum speeds of 6Mbps download and 1Mbps upload or higher for network upgrades and a minimum speeds of 10Mbps download and 1Mbps upload or higher for new deployments. These speeds should be measured at high peak traffic hours.

2. Proposed Implementation Plan for Line Extension Program

2.2 Amount Available for Grants (Page 33) Definitions:

Facilities-based broadband provider: Commenters are concerned the staff recommended definition includes satellite transponder capacity. Funding should not be provided for services with data caps or metered service.

Line Extensions: Commenters would like the definition to include fixed wireless instead of just wireless.

Unserved household: Commenters would like the definition to include speed tests measured at high peak traffic hours.

2.5 Eligible Applicants (Page 35) Commenters

believe the income of the property owner should be taken into account unless the property is guaranteed for low income individuals who meet the criteria. Otherwise an individual of wealth could just rent a room on the property out to a low income individual and possibly qualify.

2.6 Eligible Projects

(Page 35)

AB 1665 requires the Commission to "consider limiting funding to households based on income so that funds are provided only to households that would not otherwise be able to afford a line extension to the property..."

The statute does not mandate that the Commission actually impose such a limit in all cases, and the Commission should avoid any such limitation for projects located in rural areas. In many rural areas there may be gaps in already served communities due to geographic challenges, where entire tracts do not have access to broadband. Providers should be encouraged to provide service to the entire tract rather than a single individual applicant on a block. In that case,

incomes could vary widely among the residents located in relatively close proximity (due to the economic and demographic factors discussed in the "Median Income" section of these comments), and limiting the subsidized project only to those individual households that are low income is neither feasible nor cost effective, and disserves the stated goals of AB 1665.effective.

3. Proposed Changes for Rural and Regional Urban Consortia Accounts

3.4 Account Objective and Activities (Page 41): Consortia activities collaborating with the commission regarding "cost-effective strategies to achieve the broadband access goal" should explicitly include supporting local government to develop and implement local policies which as a result will make CASF grant applications more competitive and lower the cost per user. Additionally, towards this goal, consortia should be allowed to assist applicants with local environmental permit procedures and access to right of way in local jurisdictions. Local governments and applicants, especially in rural counties, have expressed these needs to the regional consortia.

WHEREFORE, the California Center for Rural Policy (CCRP), Rural County Representatives of California (RCRC), Upstate California Connect Consortium (UCCC) and the Northeastern California Connect Consortium (NECCC) respectfully requests the Commission amend its CASF proposals contained in Appendix C as set forth above in these comments.

Respectfully submitted,

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