

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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

Rulemaking 12-10-012

**COMMENTS OF THE OFFICE OF RATEPAYER ADVOCATES
ON THE ASSIGNED COMMISSIONER RULING REQUESTING
COMMENTS ON ELIGIBILITY FOR AND PRIORITIZATION OF
BROADBAND INFRASTRUCTURE FUNDS FROM THE
CALIFORNIA ADVANCED SERVICES FUND**

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August 8, 2018

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I. INTRODUCTION

Pursuant to the July 11, 2018 Assigned Commissioner Ruling in Rulemaking 12-10-012 (Ruling), the Office of Ratepayer Advocates (ORA) submits the following comments on eligibility for and prioritization of broadband infrastructure funds from the California Advanced Services Fund (CASF).

II. DISCUSSION

A. The Commission Should Retain its Current Approach to Determine the Availability of Broadband Service, and Use Subscription Data to Validate its Findings for Areas Lacking Access to Wireline Service.

The California Public Utilities Commission (Commission) should improve its assessment of broadband service availability to more accurately identify unserved areas that are eligible for CASF broadband infrastructure grants. To achieve this desired outcome, the Commission should retain its current approach to assessing broadband service availability, and augment the process by evaluating subscription data for areas that lack access to wireline services.

Currently, the Commission evaluates service providers' claims of broadband service availability to determine whether or not wireline services are available in any given census block. To assess the availability of fixed wireless services, the Commission relies on the Communication Division's (CD) signal propagation model, which estimates service availability based on the location of service towers. The Commission should retain these methods of evaluation, but improve its assessment by also evaluating subscription rates of fixed wireless services.

Fixed wireless services face unique limitations that affect service availability and adoption. For example, fixed wireless services require adequate line-of-sight, even if the customer is within the range of a service tower. Wireless services are also usually slower, less reliable, and more costly than wireline services. In addition, wireless service agreements may include restrictive data caps that can limit a customer's use of the service. These factors can hinder adoption, which indicates consumers do not consider wireless broadband service a true substitute to wireline broadband service. For these

reasons, the Commission should assess subscription rates to validate broadband availability for served census blocks in areas that lack access to wireline broadband services.

The Commission can improve its evaluation of broadband service availability by assessing the subscription rates of fixed wireless services within a particular census block. The Commission can also gauge the substitutability of services by comparing subscription rates. Ultimately, the Commission should use subscription data to test the assumptions of CD's fixed wireless signal propagation model. For example, the Commission should determine a baseline level of service adoption that is indicative of adequate availability, and only consider an area served by fixed wireless if the subscription rates exceed that baseline threshold.

B. The Commission Should Not Adopt the Proposal to Consider a Census Block as Served if a Majority of Households in that Block Subscribe to Wireline or Fixed Wireless Internet Service.

The Ruling seeks comment on the suggestion that the Commission consider a census block as served only if a majority of households in that block subscribe to wireline or fixed wireless Internet access service. The Commission should not adopt this proposal for several reasons, as discussed below.

The proposal to assess subscription rates to identify served areas does not take into account broadband speeds or service quality. California Public Utilities (P.U.) Code requires the Commission to approve CASF projects in census blocks where no provider offers access at speeds of at least six megabits per second (Mbps) downstream and one Mbps upstream (6/1 Mbps).¹ If the proposed definition of a served area does not account for speeds, subscriptions to services at speeds below 6/1 Mbps will inappropriately contribute to the designation of an area as served. Furthermore, as described in detail within ORA's reply comments (May 1, 2018) in Phase II of this proceeding, the Commission should consider service quality metrics to assess broadband services.

¹ P.U. Code § 281(f)(5)(A).

Subscription rates provide relatively little (if any) insight as to the quality of the service provided, especially if there is only one service provider available to consumers. If the Commission decides to analyze subscription rates to assess broadband availability and CASF eligibility, it should only consider subscriptions to services that meet the minimum requirement of 6/1 Mbps and provide an adequate level of service quality.

The proposal to consider a census block served only if a majority of households subscribe to broadband services will also understate service availability and overstate CASF eligibility. For example, with the proposal, the Commission would consider a census block with a 50 percent subscription rate as unserved and therefore CASF-eligible. However, a 50 percent subscription rate means broadband infrastructure already exists throughout a significant portion of the census block. Designating that census block as eligible produces concerns related to overbuilding, which the Commission must avoid to ensure prudent use of ratepayer funds.²

Overstating CASF eligibility will likely increase the number of challenges to CASF applications, which may result in an inefficient approval process. If the Commission receives challenges based on subscription rates, it may experience problems resolving them given that subscription data is confidential and/or not publicly available. In addition, a greater number of challenges will require additional Commission resources to review challenges. Challenges can also delay the review and approval of projects. For these reasons, the Commission should not alter the definition of a served census block, because it will increase the number of challenges from existing providers. The Commission should thoroughly review challenges to prevent overbuilding, but it should also aim to decrease the need for and frequency of challenges.

Furthermore, overstating CASF eligibility will shift program resources, focus, and funds away from the areas most in need. A primary goal of the CASF program is to

² Assembly Bill 1665 explains the California Legislature intends for the Commission to administer the CASF to fund broadband infrastructure where private investments and federal funds are not available and not use moneys in that fund to overbuild broadband infrastructure. Refer to the Internet for All Now Act at Section 2(c).

facilitate the deployment of broadband service in areas where Internet connectivity is available only through dial-up service and areas with no Internet connectivity.³ These priority areas lack adequate service in large part because characteristics such as low population density or high costs to deploy infrastructure due to rugged terrain or remote location often limit profitability for service providers. Overstating CASF eligibility extends the list of potential project areas, which decreases the likelihood that an applicant will propose to serve a priority area, thus perpetuating the digital divide for areas that are most in need.

C. The Commission Should Craft a Fair and Transparent Challenge Process to Prevent Overbuilding.

The Commission should post notices of open challenge periods on the CASF Infrastructure Grant Account webpage. Posting notices for open challenge periods will increase the transparency of the application review process and provide stakeholders with up-to-date information in a readily available and easily accessible format. The Commission should post a challenge period notification on the CASF webpage, and commence the challenge period on the same day it issues formal notice of a newly received application. The Commission should also post notification of any challenges to a project, as well as the results of any challenges, to keep stakeholders informed.

The Commission should increase the number of days for the challenge period to provide existing companies sufficient time to accurately assess whether or not all households in the project area have broadband availability at served speeds. The Commission should implement a challenge period of at least 30 days following the notice of an application. The challenge process should end after the allotted number of days, or when the Commission determines the merits of a successful challenge, whichever comes first. If the Commission upholds a challenge, it should only make households ineligible that are already served and allow the CASF applicant to revise the proposed project to exclude the served households.

³ P.U. Code § 281(b)(2)(B)(i).

If a challenger to an application claims that service is already available within an area, they must prove that adequate broadband service is, in fact, available to a significant portion of the households within the challenged area. The Commission should assess subscription rates to verify the availability of service, especially for fixed wireless services. The Commission should require all challengers to submit up-to-date information on their service availability and subscriptions. The requisite service availability information should include, at minimum, the type of technology and speed tiers available per census block. The requisite subscription information should include, per census block, the number of residential and business customers per speed tier. This information is necessary for the Commission to evaluate the merits of a challenge. Requiring the data upfront will help expedite the review process.

AT&T's proposal that the Commission create a single definitive list of CASF-eligible census blocks and a pre-application eligibility-map challenge process is reasonable if the Commission determines it will increase the program's efficiency and encourage participation.⁴ Any definitive list of CASF eligible census blocks should identify which census blocks contain Phase II Connect America Fund (CAF II) buildout locations that have not been relinquished or completed by the existing service provider.⁵ The Commission should also consider whether the resources necessary to create and maintain a list of CASF-eligible census blocks outweigh and the benefits of creating and maintaining the list. Finally, if the Commission does implement AT&T's proposal, the Commission should commit to specific timeframes concerning the release of, and periodic updates to, the list of CASF-eligible census blocks. Any definitive list of CASF-eligible census blocks will require frequent updates to ensure that the areas remain

⁴ AT&T Opening Comments. April 16, 2018.

⁵ Until July 1, 2020, the Commission should not approve CASF projects within a census block where an existing facility-based broadband provider has accepted federal funds for broadband deployment from CAF II, unless the existing facility-based broadband provider has completed its CAF II deployment, or the existing facility-based broadband provider proposes the CASF project to supplement the CAF II grant, as per P.U. Code § 281(f)(5)(C).

eligible to avoid funding projects in areas where adequate broadband infrastructure already exists.

D. The Commission Should Identify Priority Areas that Align with Goals of the CASF Program.

The July 11, 2018 Ruling seeks information on how and what areas to prioritize for CASF funding. The revised goal of the CASF program is to provide broadband access for 98 percent of California households in each consortia region by December 31, 2022.⁶ The Commission should align the goal of the CASF program with any process it uses to identify priority areas. For example, the Commission should identify priority areas within consortia regions that have less than 98 percent broadband availability. In the past, the Commission identified areas on a state-wide level but with the change in the goal, the Commission should focus on identifying priority areas in each consortia region. To identify the priority areas for each consortia region, the Commission should use previous methods used in T-17443, establishing priority areas, and in a white paper published by CD. However, it should also make changes to the methodologies, as recommended below.

In its white paper *High Impact Areas for Broadband Availability* (White Paper), issued February 2017, CD established a quantitative methodology to identify unserved/underserved areas with a high density of households so that broadband deployment to those areas would have a “high impact” on reaching the 98 percent goal of broadband availability. To identify these areas, CD mapped unserved/underserved areas of that state, added a household density layer, and filtered out areas that: had challenging terrain, had 60 percent or more of households served at speeds of 10/1 Mbps, had service from fixed wireless companies, and lacked unserved households.⁷ The focus of the White Paper was to identify areas that would be the highest value for deploying broadband to more California households and would be attractive to companies.⁸

⁶ P.U. Code § 281(b)(1)(A).

⁷ CPUC *High Impact Areas for Broadband Availability* at p. 8.

⁸ CPUC *High Impact Areas for Broadband Availability* at p. 1.

While the methodology is effective in identifying the areas intended, the focus of the methodology is misguided as the focus should not be only areas that are the highest value. By excluding areas that have a challenging terrain and a household density of less than 150 households per square mile, this approach fails to consider that the CASF is meant to fund deployment in areas that are high-cost and difficult-to-serve. If the Commission uses this methodology to identify priority areas, it should change the methodology to consider areas with a challenging terrain and use multiple thresholds for household density (e.g. 50, 100, or 150 households per square mile) so that more rural areas with less than 150 households per square mile are captured. This change will ensure that unserved/underserved areas do not continue to be left on the wrong side of the digital divide. Further, the methodology should consider factors such as presence of middle mile near the unserved/underserved areas, public safety concerns such as areas prone to wildfires, tribal lands, and low-income communities. For further analysis and recommendations on the White Paper methodology, please refer to Attachment A for ORA and TURN's joint comments provided to CD on March 17, 2017.

The Commission should also consider the methodology used to identify the priority areas in T-17443. These priority areas were identified by consortia groups who have knowledge of the local communities they represent. In identifying the areas, the consortia considered factors such as social and economic impact, feasibility, anchor institutions, income levels, and number of households without broadband access at 6/1 Mbps.² Since this list is now four years old and created under the old rules of the CASF, the Commission should work with the consortia to update this list of priority areas. The consortia are familiar with their respective local areas and can provide helpful information on the need for broadband in those areas which are not captured in carrier reported or Commission collected data. The Commission should consider working with consortia groups to update the list of consortia priority areas, identifying new areas by

² Resolution T-17443 at p. 10.

each consortia region. Then, the White Paper methodology can be used to identify high impact areas in each of the consortia regions.

The Ruling asks whether any priority areas that it identifies should be eligible for an expedited review and if those areas should be eligible for higher funding from the CASF. The Ruling does not specify what the expedited review would entail, but the Commission has proposed allowing CD to independently review and approve applications for CASF grant funding, which bypasses the Resolution process.¹⁰ The Commission should not implement this proposal for expedited review, as the Resolution process is important for stakeholder input and public comment on the proposed projects. The Commission should not impose an expedited review process that will cut out important input and cut time needed to do a thorough review of applications especially if the Commission is considering providing higher funding for priority area projects. Higher funding of projects will attract additional applicants and which will necessitate a thorough review of the applications. The Commission should not simultaneously adopt an expedited review of priority area projects and provide higher funding for those areas, as this increases the risk for inappropriate use of ratepayer funds.

If the Commission allows higher funding for priority area projects, it should still require a company to fund a portion of its proposed project with its own capital, as a company should always have a stake in the project. The Commission should not provide 100 percent of the funding for a project as this would lower accountability for the company and lead to potential misuse of ratepayer funds.

E. The Commission Should Carefully Assess the Availability of Middle Mile Facilities and Only Fund Middle Mile Construction when Necessary.

In its July 11, 2018 Ruling, the Commission seeks to set guidelines for the review of middle mile infrastructure requested as part of last mile projects for CASF funding. To ensure that funding for middle mile infrastructure is necessary for a last mile project,

¹⁰ Amended Scoping Memo and Ruling of Assigned Commissioner (February 14, 2018) in Rulemaking 12-10-012, at Appendix C.

the Commission should use the information and data it has collected on middle mile locations pursuant to Decision (D.) 16-12-025. When applicable, the Commission can use this information to verify the information Applicants provide on the presence or lack of middle mile infrastructure near proposed project areas. This information will help the Commission make informed decisions on whether to fund middle mile infrastructure.

The Ruling asks under what circumstances the Commission should fund middle mile infrastructure when there is existing middle mile infrastructure near the proposed project. The decision to fund middle mile infrastructure should be made on a case-by-case basis. The Commission should fund middle mile infrastructure in cases where it has determined that there are no alternate methods for middle mile access for the proposed project. The Commission can make this decision by asking companies why they cannot use existing infrastructure and request a cost-benefit analysis between using existing middle mile infrastructure and building new infrastructure. Furthermore, the Commission should handle the issue of limiting the amount of middle mile infrastructure built on a case-by-case basis. A one-size-fits all policy is not appropriate, as proposed projects vary in many ways such as size, scope, type of technology deployed, and number of households served.

If the Commission does fund new middle mile infrastructure, it should require the company to allow other last mile providers to access the middle mile facility through at cost rates. Since ratepayer money for broadband deployment funds the middle mile facility, the Commission can encourage further broadband deployment in areas around the middle mile facility through lower access rates. There is precedent for this as the Commission has required at cost rates for a previous project it approved for CASF funding. In 2013, the Commission approved the Klamath River Rural Broadband Initiative Project (KRRBI), which was a hybrid middle mile and last mile project. The Commission required the wholesale access rates for the KRRBI middle mile network be reasonable and set at cost for other CASF grantees.¹¹ The Commission should continue

¹¹ Resolution T-17418 at p. 8.

to require at cost wholesale access rates and those rates should be available to any last mile provider, not just CASF grantees, looking to connect to a CASF funded middle mile facility.

Whenever possible, the Commission should encourage companies to lease and interconnect with existing middle mile facilities to lower the cost of the project. Building new infrastructure is typically more expensive than leasing existing infrastructure. As such, companies should be allowed to lease middle mile facilities for longer than five years.

Finally, the Ruling asks whether receiving a challenge to a project requesting middle mile funding is an indication that the middle mile is dispensable or if a lack of a challenge is sufficient proof that middle mile is needed. The Commission should not solely rely on challenges, or lack thereof, to confirm whether middle mile is indispensable or not for a project. A challenge may not hold merit, which may well prove that middle mile for the proposed project is needed. Furthermore, a lack of a challenge does not mean middle mile facilities are not available. The Commission should closely review all information and data, and not just rely on the challenge process, to ensure companies do not overbuild middle mile facilities.

F. The Review Process Must Ensure Prudent Use of Ratepayer Funds.

The Commission should use CASF funds to incentivize CAF II providers to deploy throughout and in areas adjacent to CAF II communities. The Commission should also implement processes that enable staff to review proposals quickly and efficiently. However, expedited review is inappropriate for projects seeking funding to expand buildout within or in areas adjacent to CAF II areas. Applications for CAF II supplemental funding will require a more tailored review than general infrastructure grants because staff will need to ensure the CASF funding does not duplicate CAF II funding. As a result, an expedited review process likely will not facilitate a sufficient review of proposals for supplemental CAF II grants. Should the Commission choose to implement an expedited review process for CAF II expansion applications, the

Commission must ensure the application still receives a thorough review to ensure CASF funding does not duplicate CAF II funding.

In addition, the Commission should clarify whether expedited review would allow these supplemental grants to bypass the Resolution process. As discussed in our opening comments about the Infrastructure Account generally,¹² the Commission should require Infrastructure Grant applications, including supplemental grants, to go through the Resolution process. This process helps ensure prudent use of ratepayer funds and provides a forum for transparency and public input during the compulsory comment period.

G. The Commission Should Not Create a Separate Process or Set Aside Funding for Supplemental Builds in CAF II Areas.

The Commission should not create a separate process or set-aside of funding for supplemental builds in CAF II areas. The Commission already has several different application processes and funding pools available under the CASF program, and creating a new process or funding set-aside would create a new and unnecessary administrative function for the Commission. Applications to build out CAF II areas will essentially replicate other Broadband Infrastructure applications. Instead, the Commission can simply modify the application requirements so that applicants may indicate their project is adjacent to a CAF II service area or will deploy broadband to more households in an existing CAF II service area. In addition, because the Commission does not know the level of demand for supplemental funds or the current funding gap, establishing a funding set-aside would be arbitrary and, therefore, inappropriate.

H. The Commission Should Carefully Assess CAF II Buildout Plans and Commitments.

The Commission should require service providers to submit their CAF II plans along with an application for a CAF II supplemental grant. This requirement will enable the Commission to ensure CASF funds do not duplicate CAF II funding. More broadly,

¹² ORA Opening Comments at p. 10.

the Commission should require companies to submit their statewide CAF II plans and progress to the Commission, reports they are already required to submit to the FCC.

If a CAF II provider does not commit to build out a particular area, then the Commission should reclassify that area as eligible for CASF funding. However, the Commission will still need to ensure that any CASF funding provided to that area does not duplicate funds already received to build out that area. In addition, as another commenter has suggested,¹³ the Commission should impose a 90-day waiting period before it accepts new CASF infrastructure applications for newly-released CAF II areas, in order to ensure other service providers have sufficient time to develop an application, should they choose to do so.

III. CONCLUSION

The Commission must ensure that the CASF achieves its statutory mandates by carefully establishing program rules and processes. This will guarantee ratepayer funds support only eligible projects and benefit the intended recipients. The recommendations set forth above will assist the Commission in meeting the program goals.

Respectfully submitted,

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¹³ CETF Opening Comments at p. 10.