

BEFORE 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
(Filed October 25, 2012)

**REPLY COMMENTS OF THE PUBLIC ADVOCATES OFFICE
ON THE ADMINISTRATIVE LAW JUDGE'S RULING REQUESTING
COMMENTS ON THE ELIGIBILITY FOR AND PRIORITIZATION OF
BROADBAND INFRASTRUCTURE GRANTS FROM THE CALIFORNIA
ADVANCED SERVICES FUND**

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I. INTRODUCTION

Pursuant to the September 5, 2018 Administrative Law Judge Ruling in Rulemaking 12-10-012 (Ruling), the Public Advocates Office at the California Public Utilities Commission (Public Advocates Office), formerly the Office of Ratepayer Advocates,¹ submits the following reply comments on the eligibility for and prioritization of broadband infrastructure funds from the California Advanced Services Fund (CASF).

To ensure prudent use of ratepayer funds and achieve CASF program goals in a transparent manner, the California Public Utilities Commission (Commission) should require grant recipients to contribute at least 15 percent of the project cost to discourage unreasonable expenditures,² continue the use of the Resolution process to award grants,³ define key terms such as “significant contribution” as a project that deploys broadband service to at least 10 percent of unserved households within a consortia region with less than 98% deployment and “location and accessibility” consistent with Public Utilities (PU) Code Section 281(b),⁴ and clear requirements for applications that propose to supplement Connect America Fund Phase II projects.⁵ As discussed below, contrary to what some parties have asserted in their opening comments, the Commission has the authority to require CASF grant recipients to offer low-income broadband plans. These reply comments address the proposed requirement for low-income broadband plans and responds to the position of parties that oppose this requirement.

¹ The Office of Ratepayer Advocates was renamed the Public Advocates Office of the Public Utilities Commission pursuant to Senate Bill No. 854, which was signed by the Governor on June 27, 2018 (Chapter 51, Statutes of 2018).

² Public Advocates Office Opening Comments submitted September 21, 2018 to Rulemaking (R.) 12-10-012, p. 1.

³ Public Advocates Office Opening Comments, p. 7.

⁴ Public Advocates Office Opening Comments, p. 7.

⁵ Public Advocates Office Opening Comments, pp. 4-5.

II. DISCUSSION

A. The Commission Can and Should Require Grant Recipients to Offer a Low-Income Broadband Plan in Project Areas.

The Ruling includes the following question: *Should the Commission require CASF grantees to offer affordable broadband service plans as a condition of receiving CASF funding?*⁶

Several parties express differing positions on the proposed requirement for CASF grant recipients to offer low-income broadband plans.⁷ The California Cable and Telecommunications Association (CCTA), in particular, claims that the Commission cannot require CASF grant recipients to offer broadband service at specific rates.⁸ CCTA asserts the Commission does not have the legal authority to set rates for broadband services and that there is no basis for the proposed requirement within Public Utilities Code Section 281 or the legislative history of Assembly Bill (AB) 1665.⁹

CCTA is wrong. The Commission does, in fact, have the authority to require CASF grant recipients to offer a low-income broadband plan within CASF project areas. Such a requirement does not amount to rate regulation of broadband service providers.¹⁰ Instead, the requirement is merely a condition to which an applicant would *voluntarily* agree in order to receive a CASF grant. Broadband service providers are not required to apply for or take a CASF grant. In fact, the Commission has previously required specific rates in previous Resolutions approving CASF grants.¹¹

⁶ Ruling at p. 4.

⁷ For example, refer to the Opening Comments of Citizens Telecommunications Company of California Inc., Frontier Communications of the Southwest Inc., and Frontier California Inc. at p. 4. *See also*, Small LECs Opening Comments at pp. 3 to 4. *See also*, Conifer Communications Opening Comments at p. 5.

⁸ CCTA Opening Comments at pp. 3 to 4.

⁹ *Id.*

¹⁰ Even if requiring these plans amounted to price cap regulation, the Commission has the delegated authority to utilize price cap regulation under the Section 706 of the Telecom Act of 1996. *See* 47 U.S. § 1302 (a). *See also* Verizon v. FCC, 740 (D.C. Cir. 2014) F.3d 623 preserving delegated Commission authority.

¹¹ *See* Resolution T-17443; T-17418.

Contrary to CCTA’s assertion, the statute implementing the CASF program and legislative history supports the requirement of a low-income plan. PU Code Section 281 specifically requires the Commission to administer the CASF program to encourage deployment of broadband services “to all Californians that will promote economic growth, job creation, and the substantial social benefits of advanced information and communications technologies.”¹² According to data analyzed from annual California Alternate Rates for Energy Program (CARE) and Energy Savings Assistance (ESA) eligibility estimates, 29 percent of households across all of California were considered low-income.¹³ To ensure that CASF funds support the deployment of services *to all Californians* in a manner that will *promote economic growth and job creation*, the Commission must ensure that the services are accessible to everyone, including low-income households. In fact, PU Code Section 281(b)(1)(A) states:

The 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, as identified by the commission on or before January 1, 2017. The commission shall be responsible for achieving the goals of the program.¹⁴ (Emphasis added.)

To guarantee accessibility (as required by statute), the Commission must ensure the CASF-project services are affordable, especially to low-income households. Because price of broadband services is a barrier to low-income households, including a low-income broadband offering as a CASF program requirement is a reasonable, common-sense approach that will enable low-income families to subscribe to broadband services.

¹² PU Code Section 281(a).

¹³ See Southern California Edison Advice Letter 3824-E, which supports the *Compliance Filing of Pacific Gas and Electric Company (U 39-M), On Behalf of Itself, Southern California Gas Company (U 904-G), San Diego Gas & Electric Company (U 902-M), and Southern California Edison Company (U 338-E), Regarding Annual Estimates of CARE Eligible Customers and Related Information.*

¹⁴ PU Code Section 281(b)(1)(A).

The legislative history of AB 1665 also supports requiring that CASF grantees provide low-income broadband plans. The Internet for All Now Act explains, “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.”¹⁵ The plain language of the statute shows that the legislature intended for the CASF program to facilitate broadband deployment *and* adoption.¹⁶ AB 1665 also created the “Broadband Adoption Account” within the CASF program, which is yet another obvious indication that the Legislature intended for the CASF program to facilitate adoption. Consistent with the legislative history of AB 1665, the Commission must ensure that CASF broadband deployment projects provide accessible, and therefore affordable, services.

The Commission¹⁷ and the majority of parties¹⁸ appropriately recognize the need for the CASF program to address and even prioritize infrastructure projects that deploy broadband service to low-income areas. Thus, a rational approach to administering the CASF program must consider the affordability of the services deployed, especially for projects that serve low-income areas. CCTA claims that the Commission can ensure affordability by having “applicants offer access to broadband service on the same rates, terms, and conditions as for comparable services offered to all other customers in the state.”¹⁹ However, CCTA’s assertion is incorrect and will not ensure affordability for low-income households. The Commission must consider low-income households as a

¹⁵ AB 1665, “Internet for All Now Act,” October 15, 2017, at Section 2(b). Emphasis added.

¹⁶ Decision (D.) 04-04-020 at p. 4, stating, “First, one looks to the plain language of the statute. If the language is unambiguous, then the language controls and the inquiry is over.”

¹⁷ D.12-10-012 (February 27, 2014) adopts a scoring criteria for CASF broadband infrastructure applications that awards projects proposing to serve low-income areas. Refer to D.12-10-012 at Appendix 2, “Revised Application Requirements and Guidelines,” at p. 20. Also, the Commission is currently evaluating new scoring criteria proposed by Staff that also awards preference to projects that serve low-income areas. *See*, Ruling at pp. 5 to 6. *See also*, the Assigned Commissioners Ruling (July 11, 2018) to R.12-10-012 at Appendix C, p. 13.

¹⁸ For example, refer to Pacific Bell Telephone Company Opening Comments at p. 3, Race Communications Opening Comments at pp. 5 to 7, California Emerging Technologies Fund Opening Comments at p. 3, Citizens Telecommunication Company Opening Comments at p.3, and Central Coast Broadband Consortium at p. 3.

¹⁹ CCTA Opening Comments at p. 4.

distinct subset of customers apart from “all other customers” when evaluating the affordability of services offered across publicly funded infrastructure.

III. CONCLUSION

The Commission must ensure that the CASF achieves its statutory mandates by carefully establishing program rules and processes to 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 goal.

Respectfully submitted,

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