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

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

R. 12-10-012
(Filed October 25, 2012)

OPENING COMMENTS OF

**CALAVERAS TELEPHONE COMPANY (U 1004 C)
CAL-ORE TELEPHONE CO. (U 1006 C)
DUCOR TELEPHONE COMPANY (U 1007 C)
FORESTHILL TELEPHONE CO. (U 1009 C)
HAPPY VALLEY TELEPHONE COMPANY (U 1010 C)
HORNITOS TELEPHONE COMPANY (U 1011 C)
KERMAN TELEPHONE CO. (U 1012 C)
PINNACLES TELEPHONE CO. (U 1013 C)
THE PONDEROSA TELEPHONE CO. (U 1014 C)
SIERRA TELEPHONE COMPANY, INC. (U 1016 C)
THE SISKIYOU TELEPHONE COMPANY (U 1017 C)
VOLCANO TELEPHONE COMPANY (U 1019 C)
WINTERHAVEN TELEPHONE COMPANY (U 1021 C)
(the "SMALL LECs")**

**ON PROPOSED DECISION IMPLEMENTING THE CALIFORNIA ADVANCED
SERVICES FUND INFRASTRUCTURE GRANT ACCOUNT PROVISION**

Mark P. Schreiber
Patrick M. Rosvall
Sarah J. Banola
David X. Huang
COOPER, WHITE & COOPER LLP
201 California Street, 17th Floor
San Francisco, California 94111
Telephone: (415) 433-1900
Facsimile: (415) 433-5530
Email: smalllecs@cwclaw.com

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Attorneys for the Small LECs

1 **I. INTRODUCTION**

2 Pursuant to Rule 14.3(a) of the California Public Utilities Commission’s (“Commission”)
3 Rules of Practice and Procedure (“Rules”), Calaveras Telephone Company (U 1004 C), Cal-Ore
4 Telephone Co. (U 1006 C), Ducor Telephone Company (U 1007 C), Foresthill Telephone Co.
5 (U 1009 C), Happy Valley Telephone Company (U 1010 C), Hornitos Telephone Company
6 (U 1011 C), Kerman Telephone Co. (U 1012 C), Pinnacles Telephone Co. (U 1013 C), The
7 Ponderosa Telephone Co. (U 1014 C), Sierra Telephone Company, Inc. (U 1016 C), The Siskiyou
8 Telephone Company (U 1017 C), Volcano Telephone Company (U 1019 C), and Winterhaven
9 Telephone Company (U 1021 C) (the "Small LECs") offer these comments on the Proposed
10 Decision Implementing the California Advanced Services Fund Infrastructure Account Revised
11 Rules (“Proposed Decision”). The Proposed Decision addresses a wide range of proposals
12 reflecting programmatic changes to the California Advanced Services Fund (“CASF”). These
13 revisions could have a significant impact on the effectiveness and attractiveness of the CASF
14 program. The Small LECs offer these comments to ensure that the Proposed Decision reflects
15 durable solutions for CASF that maximize program participation, transparency, and objective
16 processing of grant applications.

17 In many respects, Proposed Decision properly weighs the proposals and reaches reasonable
18 conclusions. In particular, the Small LECs support the Proposed Decision’s approach to
19 evaluating “middle mile” costs that may be indispensable to last mile access. *Proposed Decision*,
20 Appendix 1, § 5.3. The Small LECs also support the Proposed Decision’s exclusion of satellite
21 coverage from the definition of “served” and the proposal to authorize direct payment of the
22 “CEQA consultant” from the CASF fund. *Id.* at pp. 54, 67. The changes to the application
23 requirements are also generally reasonable. Further, the Small LECs appreciate the recognition
24 that anchor institution access, public safety, and disadvantaged communities access can continue
25 to be factors in CASF proposals, even if such factors do not impact the expedited process that the
26 Proposed Decision envisions. *Id.* at p. 22.

27 Other areas of the Proposed Decision will create inefficiencies, reduce Commission

1 discretion in selecting projects, and discourage CASF applications. First, the Proposed Decision
2 endorses an incorrect standard for determining whether an area is “served,” relying on
3 “subscriberhip” data rather than “deployment” data. *Proposed Decision*, at p. 12. This improper
4 focus will invite regulatory arbitrage by allowing CASF applications in areas where broadband-
5 capable facilities exist, but subscribers have chosen not to take service at the target level of
6 broadband speed. Second, the Small LECs continue to oppose the proposal to approve CASF
7 projects on an administrative basis. While this may expedite processing of applications, it will
8 come at the expense of the Commission’s discretion in weighing the true benefits of specific
9 projects. From a governance and transparency perspective, this is inappropriate, and the
10 Resolution process remains the best vehicle to process all applications. Third, the Proposed
11 Decision should not adopt a CASF-specific requirement to provide an “affordable broadband
12 plan.” This is an issue better addressed on an industry-wide basis, through federal and state
13 Lifeline reforms.

14 The Small LECs are hopeful that through thoughtful consideration of these comments, the
15 Commission will reconsider the problem areas in the Proposed Decision, as set forth herein. The
16 Small LECs continue to believe that the CASF program is an important resource for facilitating
17 broadband deployment in high-cost rural areas, and the Commission should ensure that its rules do
18 not discourage participation by the carriers who are in the best position to install facilities and
19 follow through on CASF commitments.

20 **II. THE PROPOSED DECISION SHOULD NOT RELY ON SUBSCRIBERSHIP**
21 **DATA TO DETERMINE WHETHER AN AREA IS SERVED.**

22 The Proposed Decision relies on a false equivalency between “subscriber data” and service
23 availability data. *Id.*, at pp. 12. The proposal to “validate deployment data using the presence of
24 one subscriber in that census block” is an inaccurate and harmful method for determining CASF-
25 eligible areas. If the Commission proceeds with this proposal, it will create externalities in the
26 CASF program and create strong possibilities that projects will be funded to “over-build” existing
27 broadband-capable facilities. This would be wasteful and contrary to the CASF goals, yet it is
28 likely to happen, especially if the Commission proceeds with its proposal to issue CASF grants on

1 an administrative basis, without vetting the project-specific benefits through the full Commission
2 approval process.

3 As parties in this proceeding have explained,¹ subscription data and service availability do
4 not entirely correlate with one another, especially in sparsely populated areas. In some Small LEC
5 territories, broadband-capable facilities exist with functionalities that far exceed the CASF
6 “served” standard of 6 Megabits per second (“Mbps”) download and 1 Mbps, but subscribers have
7 chosen not to take service at those levels. The Small LECs are aware that the Commission’s
8 mapping and service validation efforts have identified some of these areas as “unserved,” but that
9 designation is contrary to reality. In the context of the CASF grant process, it would be a misuse
10 of public funds to pay for a new network where a robust broadband-capable network already
11 exists. The Proposed Decision’s approach to determining whether an area is “served” creates this
12 exact problem, and risks undermining the objectives of the CASF program. Relying on the
13 presence of one subscriber in a census block to confirm the availability of broadband will harm the
14 CASF program by proliferating false-negative findings of lack of service in areas where 6/1 or
15 faster service is present. Consequently, census blocks that do not require or deserve CASF
16 funding will be considered for such funding, and this will divert CASF funds away from areas that
17 truly lack meaningful broadband access.

18 The distinction between subscribership and deployment is fundamental, as many parties
19 have recognized. Indeed, subscription data and service availability correspond to two discrete
20 contributors to the Digital Divide – broadband *adoption* and broadband *access*. As CETF has
21 correctly observed, consumers' levels of broadband adoption continues to be impacted by various
22 factors unrelated to access, including income, language barriers, age, disability, and education
23 level.² This is exemplified by recent findings that “[l]ack of meaningful internet access is at
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25 ¹ *California Emerging Technology Fund ACR Comments*, p. 4 (Aug. 8, 2018); *AT&T ACR*
Comments, pp. 3-4 (Aug. 8, 2018); *GeoLinks ACR Comments*, p. 3 (Aug. 8, 2018).

26 ² See CETF California LifeLine Program Workshop Presentation (Aug. 7, 2018), Hon. Lloyd
27 Levine (ret.), slide 4, *available at*
28 [http://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/C](http://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/Communications_)
[ommunications_](http://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/Communications_)

1 25.22% in areas where network access issues are not an impediment."³ The Proposed Decision's
2 correlation of adoption data to conclusions about access conflates two separate drivers affecting
3 the ability of broadband to reach California households.

4 The Commission should revise the Proposed Decision to remove the reliance on
5 subscribership data in determining deployment. Rather, the Commission should accept
6 information from carriers regarding the functionality of their networks, including speed tests,
7 network engineering documentation reflecting facilities, and any other indicia of facilities
8 capabilities that accurately pinpoint the core consideration in evaluating CASF eligibility – do
9 customers have access to broadband-capable facilities, regardless of whether they have chosen to
10 subscribe to service? The Commission should revise the Proposed Decision to avoid the
11 inaccuracies and inequities of the current approach.

12 **III. THE PROPOSED DECISION SHOULD NOT ADOPT A MINISTERIAL**
13 **APPROVAL PROCESS FOR CASF PROJECTS.**

14 The Small LECs oppose the Proposed Decision's ministerial path for approving CASF
15 projects. *See Proposed Decision*, at pp. 25-27. If the Commission adopts this rule as a fixture of
16 the CASF program, then it will categorically approve all prospective projects that meet the listed
17 eligibility requirements without fully considering the true benefits and costs of each project.
18 While the Proposed Decision's approach will surely speed up certain project approvals in some
19 cases, it will just create a shortcut to an improper result.

20 CASF program funds are limited, and the goals of the program are important. It would be
21 imprudent to approve projects in this arena without at least issuing a Draft Resolution to give the
22 Commissioners the opportunity to consider each project on its merits and exercise their discretion
23 over its potential adoption. Without this broader consideration, key variables will be overlooked,
24 including local and statewide project prioritization, budgetary concerns, policy benefits of

25
26 _Telecommunications_and_Broadband/Consumer_Programs/California_LifeLine_Program/CETF
27 .pdf.

28 ³ HON. LLOYD LEVINE (RET.) & MATTHEW P.H. TAYLOR, *Closing the Digital Divide: A Historic and Economic Justification* 3 (UCR SPP Working Paper Series, May 2018-WP#18-05).

1 individual projects, and input of regional consortia, stakeholders, local governments, existing
2 facility-based broadband providers, and consumers, pursuant to Public Utilities Code Section
3 281(f)(2). The ministerial approval process would create a preferred class of CASF projects that
4 satisfy the predetermined administrative criteria, but which do not necessarily confer important
5 community benefits.

6 Similarly, by fast-tracking certain projects that meet the prescribed criteria, and forcing
7 other projects to seek approval through the Resolution process, truly meritorious projects with
8 broader benefits could be prejudiced simply because they do not fit the preconceived formula for
9 ministerial approval. By allowing projects of a certain size and cost to bypass full regulatory
10 scrutiny, the ministerial approval process would divert funds toward smaller, and likely less
11 ambitious projects on the basis of administrative convenience. This is not a viable long-term
12 strategy to meet AB 1665 goals, and the Small LECs are concerned that projects with material
13 public safety, anchor institution, and regional benefits may be given short shrift under this
14 approach. Indeed, it appears entirely possible that the Communications Division's internal
15 resources will be devoted entirely to ministerial review, with no bandwidth to consider broader
16 projects that do not fit the pre-defined set of criteria in the Proposed Decision.

17 The Proposed Decision commits the projects' proponents to "publicly identify[ing]" their
18 qualifications with regards to the requisite criteria. *Proposed Decision*, at p. 26. However, this
19 does not resolve the need for an opportunity for stakeholder parties to comment and for the
20 Commission to fully consider each project. This aspect of public participation in the CASF
21 Program is vital to preserving the integrity of the program. The Commission should only approve
22 CASF grants through resolutions after such grants have undergone notice and comment by
23 stakeholders, and review and approval by the full Commission.

24 The creation of a ministerial approval process is particularly concerning given the problem
25 discussed in Section II, above. If subscribership data is the basis for evaluating whether an area is
26 already served, the combination of these two proposals could mean that the CASF program is used
27 to fund overbuilding activities and duplicative broadband-capable networks without any decision

1 or resolution adopted by the Commission. To address this concern, the Commission should at
2 least make the ministerial process unavailable where a project is challenged. Where a dispute
3 arises regarding the extent of existing broadband deployment or service availability, it should
4 trigger the need for a Resolution.

5 **IV. THE PROPOSED DECISION SHOULD NOT MANDATE THE CREATION OF A**
6 **SPECIFIC LOW-INCOME BROADBAND SERVICE AS A PRECONDITION TO**
7 **CASF GRANTS.**

8 The Proposed Decision includes a requirement that “[a]ll projects . . . provide an affordable
9 broadband plan for low-income customers.” *Id.*, at p. 62. While the Small LECs agree that
10 affordability is a key issue in Commission ratemaking, and the Small LECs are committed to
11 promoting affordability for their customers, the requirement to provide a low-income broadband
12 offering is unduly restrictive and unnecessary in the context of CASF grant proposals. Broadband
13 affordability is an issue that would be more appropriate for consideration as part of the LifeLine
14 program, which is being evaluated in another open proceeding, R.11-03-013. In addition, the
15 Federal Communications Commission already took steps to address low-income broadband
16 affordability by making federal Lifeline credits available to fund Internet access offerings. *See In*
17 *the Matter of Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, *Third*
18 *Report and Order*, FCC 16-38 (rel. April 27, 2016).

19 It should be an option for CASF grant proposals to include low-income offerings, but it
20 should not be mandatory. For smaller rural carriers who are subject to the NECA tariff, this
21 requirement may pose particular concerns, as wholesale Digital Subscriber Line (“DSL”) service
22 does not vary in price based on the income level of the end users who are ultimately served via
23 that access. Rather than forcing companies to propose a low-income offering, the Commission
24 should note that this is an option, but should consider proposals for their full merits, even if they
25 do not – or cannot – include such a service.

26 **V. CONCLUSION**

27 The Small LECs appreciate the time and effort that the Commission and its staff has put
28 into crafting this Proposed Decision, which overhauls the CASF rules and procedures. The

1 comments that the Small LECs have provided here are intended to steer the CASF program toward
2 the goals of AB 1665, and to make CASF a more effective, efficient, and equitable program. The
3 Small LECs urge the Commission to make the changes proposed herein, which will improve
4 efficiency, fairness, and transparency in the CASF program.

5 Dated this November 29th, 2018 at San Francisco, California.

6 Respectfully submitted,

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8 Mark P. Schreiber
9 Patrick M. Rosvall
10 Sarah J. Banola
11 David X. Huang
12 COOPER, WHITE & COOPER LLP
13 201 California Street
14 Seventeenth Floor
15 San Francisco, CA 94111
16 Telephone: (415) 433-1900
17 Telecopier: (415) 433-5530
18 Email: smalllecs@cwclaw.com

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28 By: _____/s/ David X. Huang
David X. Huang
Attorneys for the Small LECs