

**PUBLIC UTILITIES COMMISSION**

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June 11, 2014

Ryan Dulin  
Director of Communications Division  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102

**Re: Draft Resolution T-17443 Implementation of New Timelines for California Advanced Services Fund Applicants**

Dear Mr. Dulin,

Pursuant to Rule 14.5 of the California Public Utilities Commission's Rules of Practice and Procedure, the Office of Ratepayer Advocates (ORA) submits these comments on Draft Resolution T-17443, mailed on May 27, 2014. Draft Resolution T-17443 implements new timelines for applicants to the California Advanced Services Fund (CASF), including how and when local government agencies and non-telephone corporations may apply pursuant to Senate Bill (SB) 740. It also describes how existing providers may exercise their right-of-first-refusal as provided under SB 740. In addition, the Resolution lists areas in California that various CASF-funded regional consortia groups and state agencies have identified as priorities for broadband infrastructure deployment. SB 740 set a goal for the Commission to approve funding for infrastructure projects that will provide broadband access to no less than 98% of California households by no later than December 31, 2015.

As discussed below, the Draft Resolution sets up a process by which existing providers might "game the system" in order to avoid making any firm commitment to upgrade its system and discourage any other potential providers from applying for CASF funds. ORA's comments offer an alternative approach in order to remedy these concerns. ORA makes some additional recommendations in order to improve transparency and information available to the public and potential CASF applicants on areas where existing providers intend to upgrade their broadband networks. Finally, ORA recommends posting updates to the CASF website on the status of any unserved/underserved area in order to facilitate public feedback to demonstrate if in fact the area is unserved/underserved.

**A. Existing Providers – the proposed right-of-first-refusal process sets up a potential to "game the system"**

ORA requests clarification and modification to the "right-of-first-refusal" period, as the proposed filing dates set up a confusing process. Under the proposed process, the existing provider (EP) has until September 26, 2014, to file a letter of intent (LOI) with Communications Division (CD)

to upgrade its broadband networks in its present service territory with underserved households.<sup>1</sup> If the EP wants California Advanced Services Funds (CASF) in order to perform this upgrade, it must file its CASF application by October 1, 2014. Presumably, other providers may also submit CASF applications during this first application round due date of October 1, 2014.

However, the allowance of only four (4) days between the filing of the LOI and the due date for the first round of applications provides the EP an opportunity to “game the system” and discourage competing grant applications. If the EP issues an LOI to upgrade its broadband network on September 26, 2014, then it is responsible for completing the upgrade by April 1, 2015. If the EP does not finish the project, only then can Staff consider applications received for projects that would serve part of or the entire area.<sup>2</sup> However, as the Draft Resolution acknowledges:

An application for a CASF grant can be very [sic] a lengthy process and require significant company resources. Thus, most, if not all, companies will wait to see which areas are claimed by existing providers exercising their right of first refusal before expending those resources to apply for a CASF grant.<sup>3</sup>

Given the time and resources involved in compiling and submitting an application, ORA is concerned that providing only four (4) days’ notice of intent to upgrade essentially guarantees that no other potential provider will submit CASF applications on October 1, 2014, for underserved areas. Therefore, ORA recommends the following approach:

1. On September 26, 2014, the EP submits an LOI stating whether they will use their own money to upgrade the broadband network or seek CASF funding.<sup>4</sup> If the EP chooses to self-fund the upgrade, then the commitment is binding and the upgrade can be completed by April 1,

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<sup>1</sup> An EP exercises its right-of-first-refusal by submitting a letter of intent (LOI).

<sup>2</sup> Draft Resolution at 7.

<sup>3</sup> *Id.*, at 5.

<sup>4</sup> ORA’s preferred policy approach would be to require that the exercise of an EP’s right-of-first refusal be limited to upgrades that it will fund with its own money and to require that the EP execute the upgrade in six months or be subject to an enforcement action. Under this preferred policy approach, the EP would not be able to exercise the right-of-first refusal if it seeks CASF funding for its proposed upgrade. This is preferred because ORA would rather have an EP compete with any other potential CASF applicant for CASF funds so that the most cost-effective solution can be considered for funding, and this approach would not discourage other applicants from applying for CASF funds in the earlier rounds of submission due dates. Moreover, this approach would minimize delay in upgrading underserved areas in cases where the EP applies for CASF funds but is denied, as the EP would not be able to exercise its right of first refusal before other potential applicants are considered. However, as it is unclear whether this preferred policy approach is consistent with the applicable statute, ORA makes an alternative recommendation in these comments, whereby if an EP chooses to apply for CASF funding to upgrade its existing service, it does not compete with applications from non-CPCN/WIR holders in the same project area.

2014. If the EP chooses to make the upgrade with CASF funds, it should clearly indicate its intent to apply for CASF funds in its LOI.

2. On October 1, 2014, if an EP decides to seek CASF funding, it must file its CASF application. If it fails to do so, then its right-of-first-refusal expires. Any other grant applicant who is also interested in serving the area will submit a letter on October 1, 2014 identifying the area they want to serve and their intent to file a CASF application if the EP's application is denied.
3. On December 1, 2014, if the EP application is not challenged nor has any issues, CD notifies the EP of its determination on the CASF grant application. Since there would be only one application to review in an area, the funding evaluation should consider the following factors, in addition to other factors currently applied by CD in assessing CASF applications: 1) the EP's financial ability to fund the upgrade without CASF funds or with partial CASF funds lower than the amount requested by the EP and 2) whether there are any other potential grant applicants willing to serve the area (as indicated by their October 1, 2014, notices).
4. On December 1, 2014, if CD denies the request in whole or grants only partial CASF funding (i.e., a grant amount lower than that requested by the EP), then the EP has five (5) days to notify CD that it will accept the CASF funding amount determined by CD. If such notification is provided, then CD will prepare a Resolution for the Commission's approval at a later date.
5. In the event CD rejects the EP's funding request, then the EP has the same 5 days to notify CD that it will self-fund the upgrades; this would be a binding commitment on the part of the EP (i.e., it must complete the upgrades by April 1, 2015, or else it would be in violation and be subject to enforcement action). Thus, this five day period gives the EP time to decide what to do and provides other interested parties time to prepare their CASF applications. If the EP does not self-fund or does not accept CD's CASF grant offer or is otherwise silent in this five day period, then its right-of-first-refusal expires and it cannot exercise it again for the life of the CASF program.
6. If the EP decides not to accept CD's determination and/or not to self-fund, then on January 15, 2015, all other grant applicants or interested parties can submit their CASF application.

This approach will prevent the scenario whereby an EP can avoid committing to upgrading its broadband network by deciding not to file a LOI on September 26, 2014, and yet still file a

CASF application on October 1, 2014 (and be the only applicant as other potential applicants would be deterred from filing due to the 4 day window.)

By having other parties file their LOI on the same date, October 1, 2014, this will put CD on notice that there are other grant applicants willing to serve the area. It will also ease ORA's concern about the absence of competing applications, and the lack of any commitment to upgrade an underserved area.

ORA further recommends that there be a binding commitment from an EP issuing an LOI to upgrade its existing service in underserved areas, such as an affidavit stating such. If the EP does not meet its commitment to build out in the specified area, it should constitute a violation and be subject to enforcement action.

**B. The April 1, 2015 completion date for EPs exercising their right-of-first-refusal should be binding**

ORA further recommends that the April 1, 2015, deadline for an EP to complete its network upgrade be a hard and firm deadline. If an EP files an LOI on September 26, 2014, stating that it will upgrade the existing network, then the April 1, 2015 completion date is reasonable and should be binding.

If the EP uses its own money to fund the upgrade, then it can begin immediately. If it seeks CASF funding, then under the process proposed by ORA above, the EP will know by December 1, 2014, whether it will receive the grant. In any event, it should have sufficient time to complete the project and any commitment to upgrade its broadband network should be binding, and failure to complete the project should constitute a violation and be subject to enforcement penalties.

**C. The Commission should post a list of all areas where Existing Providers intend to upgrade their broadband network on the CASF website**

According to the Draft Resolution, the existing provider must submit its LOI to the Director of CD and must email a copy to the CASF distribution list.<sup>5</sup> ORA recommends that CD post on its CASF webpage a list of all the areas EPs have issued letters of intent to upgrade their existing networks so that the public and any other potential CASF applicant who is not part of the CASF distribution list can be made aware of such areas. The list of areas where EPs intend to build out should also clearly identify if the EP is planning to apply for CASF funding to make such upgrade. ORA recommends that the example letter in Appendix 3 of the Draft Resolution be updated to include an indication from the EP as to whether it plans to submit a CASF application.

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<sup>5</sup> Draft Resolution at 5.

**D. The Commission should post the priority list spreadsheet to show updates to the status of any underserved area on the CASF website**

The Draft Resolution states that CD asked currently existing regional consortia to determine priority areas for broadband projects in each of their regions for the purposes of SB 740.<sup>6</sup> Appendix 4 to the Draft Resolution lists 180 communities in 46 different counties designated as priority areas. CD Staff performed a high-level validation of the consortia's submitted data by comparing these areas with the California Broadband Availability Map.<sup>7</sup> The Draft Resolution notes that CD Staff concedes that there may be areas identified as served in the Interactive Broadband Map that have been deemed actually underserved or unserved by mobile speed tests or public feedback.<sup>8</sup> Staff also acknowledges that there may be areas without any mobile speed tests or public feedback that could actually be underserved or unserved areas. The Draft Resolution states that the list in Appendix 4 and the high level validation performed by Staff is meant to spur information gathering which in turn can facilitate broadband deployment in these priority areas.<sup>9</sup>

In order to facilitate the necessary information gathering and public input, ORA recommends that the Priority List spreadsheet be made available on the CASF homepage and be updated accordingly to show any changes to the status of those areas (i.e. such as when an area now deemed served or underserved shows after further testing that the area is in fact not served).

Respectfully submitted,

/s/ KIMBERLY LIPPI

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cc: John Baker, Communications Division  
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<sup>6</sup> *Id.*, at 8.

<sup>7</sup> *Id.*, at 10.

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

**CERTIFICATE OF SERVICE**

I hereby certify that I have on this date served a copy of **Draft Resolution T-17443 Implementation of New Timelines for California Advanced Services Fund Applicants** to all known parties by electronic mail to the attached service list Draft Resolution T-17443.

Executed on June 11, 2014, at San Francisco, California.

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/s/ **NANCY SALYER**  
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