**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)

COMMENTS OF CITIZENS TELECOMMUNICATIONS COMPANY OF CALIFORNIA INC. (U-1024-C), FRONTIER COMMUNICATIONS OF THE SOUTHWEST INC. (U-1026-C), AND FRONTIER CALIFORNIA INC. (U-1002-C) ON ORDER REOPENING THE PROCEEDING FOR COMMENTS ON THE IMPLEMENTATION OF SENATE BILL 745

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April 7, 2017

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Citizens Telecommunications Company of California Inc. d/b/a Frontier Communications of California (U-1024-C), Frontier Communications of the Southwest Inc. (U-1026-C), and Frontier California Inc. (U-1002-C) (collectively "Frontier"), pursuant to Rule 6.2 of the Commission's Rules of Practice and Procedure, hereby submits comments on the Order Reopening the Proceeding for Comments on the Implementation of Senate Bill 745, Decision 17-03-002, ("Order"), issued March 9, 2017.

I. Introduction

As stated in Ordering Paragraph (OP) 1 of the Order, the California Public Utilities Commission ("CPUC") has reopened this proceeding to implement changes in the California Advanced Services Fund ("CASF") program required by Senate Bill ("SB 745"). In addition to Broadband Public Housing Account provisions, these legislative changes include new requirements for the CPUC's annual report to the Legislature on the CASF. Specifically, SB 745 amended Public Utilities Code Section 914.7 to require that the annual report include "[a]dditional details on efforts to leverage non-California Advanced Services Fund funds."[1] The Order, however, does not discuss in any substantive way this new reporting requirement. Frontier respectfully submits that this new reporting requirement is significant because it promotes the leveraging of non-CASF funds to support the state's broadband deployment goals. Frontier's comments address this new requirement.

II. SB 745's New Reporting Requirement Was Adopted in the Context of California Providers Accepting Several Hundred Million Dollars in Federal Funds for Broadband.

SB 745 was a two-year bill introduced in early 2015 but not heard in committee until 2016. Amendments to the bill dated January 4, 2016, added the new requirement that the CPUC report to the Legislature on efforts to leverage non-CASF funds for broadband deployment.[2] This was about a month after the CPUC issued D.15-12-005 approving Frontier's acquisition of Verizon wireline operations. A significant aspect of this decision was Frontier's commitment to utilize federal and state universal service funds to increase broadband deployment in its service areas. Specifically, Frontier agreed to accept funds from Phase II of the Federal Communications Commission's Connect America Fund (CAF II) and leverage these federal dollars with CASF grants and Frontier's private investment to increase significantly broadband access in its footprint.[3]

The CPUC deemed Frontier's commitment to access CAF II funds as material to its conclusion that the transaction was in the public interest. The record of the proceeding indicates that Verizon was not participating in the CAF program. Frontier on the other hand, had

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[1] PU Code Section 914.7(a) (8).
[2] For the legislative history and all versions of the bill, see http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB745.
[3] See D.15-12-005 at http://docs.cpuc.ca.gov/publisheddocs/published/g000/m156/k249/156249641.pdf.

participated in the first phase of the CAF program and "CAF I" obtained eight separate CASF grants to expand broadband in its legacy service area.

Frontier also was the only provider to exercise the "First Right of Refusal" pursuant to Resolution T-17443 with a commitment to use CAF I funds and private investment to upgrade broadband in unserved and underserved areas of its footprint. Thus, the CPUC recognized Frontier's demonstrated ability to expand broadband by accessing both federal and state broadband funds – the kind of leveraging of funds that SB 745 contemplated with the new reporting requirement.[4]

III. SB 745's New Reporting Requirement Is Part of a Statutory Scheme to Maximize Federal Funding for Broadband Deployment.

The requirement that the CPUC report annually to the Legislature on the CASF program is part of the overall statutory scheme of state universal service programs including the California High Cost B Fund and A Fund programs and the CASF, among others.[5] These state programs, like the CAF and other federal universal service programs, are funded by customer surcharges on wireline, wireless, and VoIP service.

Section 270 of the Public Utilities Code, with reference to all of the state universal service programs including CASF, includes this directive to the CPUC:

> *(c) The commission, in administering the universal service program funds listed in subdivision (a), and in administering state participation in federal universal service programs, is encouraged, consistent with the state's universal service policies and goals, to maximize the amount of federal funding to California participants in the federal programs.*

[4] By the end of 2015, AT&T and Consolidated Communications also had agreed to accept CAF II funds for broadband deployment in California.

[5] See Chapter 1.5 (commencing with Section 270) of Part 1 of Division 1 of the Public Utilities Code at http://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=PUC&division=1.&title=&part=1.&chapter=1.5.&article.

The Legislature added this provision to Section 270 in SB 1364 (Fuller 2014) in recognition of California's continuous status as a net donor to federal universal service programs. As stated in the legislative history of this bill:

> *"In addition to administering the CHCF-A and CHCF-B and all other state universal service programs, the CPUC plays a role in administering federal universal service programs for California participants. All California customers of landline, wireless, and VoIP service pay the state and federal surcharges that fund all of these programs. Given the overlap of state and federal programs, ensuring maximum California participation in the federal programs can help minimize costs of the counterpart state programs. Unfortunately, California customers pay much more into the federal universal service programs than comes back to California participants, and the net contribution is growing each year – up to $380 million in 2012 (see attached chart with data compiled by CPUC staff). To benefit all the customers who are paying universal service surcharges pursuant to Sections 270 and 285 of the Public Utilities Code, the CPUC should make it a priority to ensure that its policies and practices maximize every opportunity for increasing California's take of federal funds."*[6]

Thus, SB 1364 codified direction to the CPUC to maximize California's access to federal universal service funds. As a follow-up, SB 745 requires the CPUC to report to the Legislature additional details on leveraging non-CASF funds -- such as CAF II funds -- to achieve the state goal to increase broadband deployment. The CPUC should implement the new reporting requirement in SB 745 with consideration of this overall statutory scheme as amended by SB 1364.

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[6] See SB 1364 (Fuller 2014), analysis of Senate Committee on Energy, Utilities and Communications at http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201320140SB1364. Exhibit A to this analysis presents information from the CPUC demonstrating California's status as a net donor to federal universal service programs. Updated information obtained from the Communications Division in March 2017 indicates that this net donor status continues to exceed $200 million per year.

IV. The CASF Digital 299 Resolution Illustrates Details on Leveraging Non-CASF Funds to Which SB 745's New Reporting Requirement Should Apply.

The CPUC's just released annual report to the Legislature on the CASF program includes elements required by Public Utilities Code Section 914.7 before it was amended by SB 745.[7] Going forward, the report will need to include "[a]dditional details on efforts to leverage non-California Advanced Services Fund funds." To include such details in the annual report, the CPUC needs to first identify what those details should be and then collect those details throughout the year as it reviews and approves CASF applications.

The CPUC's recently approved resolution awarding CASF funds for Digital 299 is a critical and timely illustration of details that should be reported to the Legislature on leveraging non-CASF funds, in this case federal CAF II funds. Resolution T-17548 approved a $47 million grant for a large middle-mile project in northern California with last-mile service to 307 households. The original application sought funding to serve additional households in Frontier's service area, but these were removed from the grant after Frontier indicated that it would expand broadband to those households with CAF II funding. The CPUC's apparent rationale for this change was to avoid award of CASF funds to overbuild a CAF-funded project (i.e., leverage non-CASF funds). However, the resolution nonetheless states that the households in the CAF project area would still be considered "underserved" and therefore eligible for a future CASF grant because CAF II requires 10/1 service and, under CASF rules, any household receiving service less than 6/1.5 is "underserved." Thus, the CPUC stated the following regarding Frontier's CAF II build:

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[7] See Annual report on CASF for 2016 (released April 2017) at http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M183/K260/183260801.PDF
Page 7 lists elements of the report required by Public Utilities Code Section 914.7, not including the new information required by SB 745.

> "It should be further noted that if Frontier does not bring the affected customers up to the California minimum of 6 mbps download *and* 1.5 mbps upload, then the area would be eligible for future CASF grant applications."[8]

In the case of Digital 299, the relevant details about leveraging non-CASF funds is that the lack of alignment between CASF and CAF II service speed requirements apparently <u>precludes</u> leveraging non-CASF funds. In fact, it leads to a set-up for using state funds to overbuild broadband projects already constructed with federal funds – just the opposite of leveraging (and contrary to SB 1364). It is Frontier's understanding that this statement in Resolution T-17548 establishes the precedent that the CPUC would potentially award CASF funds for a broadband project that overbuilds a CAF II project merely because of the .5 mbps differential in the upload speed of the two programs. The result is that customers could be asked to pay *twice* for broadband in the same area.

Additional relevant detail on leveraging non-CASF funds in the Digital 299 resolution is the CPUC's decision to award CASF funds for constructing cell towers not related to the underlying middle-mile or last-mile broadband project. The resolution awards the grant recipient an extra \$3.1 million in CASF funds to construct 15 cell towers in any unserved or underserved area along the project route, which includes the area where Frontier is expanding broadband with CAF II funds. This illustrates a failure to leverage non-CASF funds because it awards even more CASF funds for infrastructure where federal funds already are available to expand broadband. Moreover, this outcome lowers Frontier's incentive to use CAF II funds in that area, negates Frontier's challenge to the portion of the underlying CASF broadband project in its footprint, and

[8] Resolution T-17548 at page 13. Frontier filed comments in general support of the CASF award for Digital 299 but objecting to award of CASF funds for constructing cell towers as an add-on to the underlying middle-mile and last-mile broadband project.

essentially asks customers to potentially pay *three* times for infrastructure in the same area – perhaps even *four* times if you count a grant from a CPUC program several years ago.[9]

V. **The CPUC Should Ask Questions About Leveraging Other Funds In Connection With Each CASF Application.**

Frontier proposes that, in order to collect details on leveraging non-CASF funds for inclusion in the annual report, the CPUC should ask the following questions about each CASF application:

- Does the applicant seek CASF funding for broadband infrastructure serving households where CAF-funded broadband already has or will be deployed?
- Has the applicant taken steps to obtain funding for the proposed CASF project from the CAF II program, Mobility Fund, or any other source of non-CASF funds?
- Will the applicant's proposed CASF project be deployed in conjunction with an adjacent or nearby CAF II project, thereby enabling the applicant to leverage the combined funding sources in a single build?
- Is the applicant seeking funds for a project that has previously received any state or federal grant and, if so, how were the previous grant funds used?

Obtaining answers to these questions for each CASF application will enable the CPUC to gather sufficient details on leveraging non-CASF funds for reporting to the Legislature. Indeed, the answers may well lead the CPUC to modify the program or recommend statutory changes to more effectively achieve the program goals. For example, the CPUC may seek to increase leveraging of non-CASF funds by modifying the current CASF definition of "underserved" so that households served by a CAF II project are not eligible for a CASF grant. In the alternative, the CPUC could establish the policy to not award any CASF funds in a CAF II area to avoid double funding broadband from both a state program and a federal program each paid for with

[9] See Resolution T-16846 where the CPUC awarded a Rural Telecommunications Infrastructure Grant of $2.5 million to Trinity County for constructing 10 cell towers http://docs.cpuc.ca.gov/publisheddocs/published/final_resolution/37407.htm This grant program, also funded with customer surcharges, no longer exists and it is unclear if the cell towers were built or the disposition of the grant funds.

customer surcharges. All of these details would be of great interest to the Legislature, especially as it considers pending legislation to authorize more funding for the CASF program.

VI. Conclusion

In reopening this proceeding to implement SB 745, the CPUC should not overlook the bill's important new requirement to report to the Legislature on efforts to leverage non-CASF funds. This requirement is critical during this time when several hundred million dollars in federal broadband funds are being spent to expand broadband in California. Leveraging these non-CASF funds will help California achieve infrastructure deployment goals, reduce the amount of additional funds needed for CASF, and maximize the benefits for customers who pay the surcharges that fund both state and federal universal service programs.

Respectfully submitted,

Charlie Born

Charlie Born

Filed April 7, 2017