

VIA ELECTRONIC MAIL

March 15, 2017

Ms. Clover Sellden
Senior Regulatory Analyst - Communications Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

RE: Comments of CALTEL on Draft Staff White Paper “High Impact Areas for Broadband Availability”

Dear Ms. Sellden,

In accordance with the schedule set in the Staff White Paper issued February 17, 2017, the California Association of Competitive Telecommunications Companies (CALTEL) provides the following comments on behalf of its members. CALTEL has also transmitted a copy of these comments to the CASF Distribution (Service) List as discussed in the February 28, 2017 workshop.

SUMMARY

As the trade association representing the interests of competitive carriers in regulatory matters before the Commission, and on legislation being considered by the state legislature, CALTEL has a multi-faceted perspective on policy issues affecting the Commission’s administration of the California Advanced Service Fund (CASF). Some of CALTEL’s members are carriers that have applied for, or been granted, CASF funds. Many of CALTEL’s members own and operate facilities-based networks which include fiber or fixed wireless last-mile connections which could potentially be overbuilt by a CASF applicant. All of CALTEL’s members bill their end user customers for CASF surcharges, and all have employees that are surcharge-paying customers.

As a result, CALTEL’s views about the program are not black and white. CALTEL generally supports the goals of the program and believes that it has been successful in helping to close the digital divide in California.

There are a number of policy issues that the Legislature appears to be considering in draft legislation this session, including increasing the 98% goal, extending the program deadline, allocating additional funds, creating a new fund account to focus on broadband adoption, and revising reporting requirements. While the Staff White Paper (Whitepaper) does not directly discuss these policy issues, and appears instead to be focused on

identifying “high impact areas” that could be funded on a “fast track” basis to most effectively meet the current 98% goal with the remaining funds, it is difficult and ultimately unhelpful to ignore these overarching issues in order to evaluate the Whitepaper in a short-term context.

That said, CALTEL’s concerns about the Whitepaper can be summarized as follows:

1. Adopting the “new approach”¹ to CASF applications outlined in the Whitepaper is equivalent to changing CASF rules mid-stream in a way that is unfair and that disadvantages pending applications;
2. Adopting the fixed wireless “filter” proposed in the Whitepaper in order to avoid delays associated with challenges from fixed wireless Internet Services Providers (WISPs) is counter-productive to program objectives and provides a competitive advantage/windfall to WISPs that may not provide broadband services to all customers at qualifying speeds;
3. Due to real-world business considerations, identifying High Impact Areas as recommended in the Whitepaper, and “fast-tracking” applications for those areas, is unnecessary and will likely not generate new applications for those areas.

DISCUSSION

Issue 1: Impact on Pending Applications

The discussion at the February 9th Commission meeting suggests that there are unclear objectives regarding the purpose of the Whitepaper, and how it will be used, even in the short-term. This is especially evident since, based on discussion at the workshop, there does not seem to be a need to “fast-track” applications for the 13 “high-impact” areas. CALTEL makes this conclusion based on the fact that one of the criteria selected by staff is a “fixed wireless filter” that helps ensure that applications for these areas will not be challenged by fixed wireless providers (which they identified as the primary source of delays in getting applications approved) and as a result, such applications would fast-track themselves.

In doing more than quantifying relevant information about the 46 areas of interest, the Commission appears to be straying from its role of program administrator, and is now soliciting applications for specific unserved/underserved areas. Even if such a role is deemed to be appropriate for a future phase of the program (assuming the legislature decides to extend it), it is not appropriate to do so now. The Commission should not adopt any proposed process that puts it in the role of picking winners and losers (both in

¹ Whitepaper at p. 6.

terms of applicants as well as potential end user customers), and it is unfair to change the rules in the middle of the game and to subject pending applications to new criteria.

Issue 2: Impact of the Fixed Wireless Filter

As discussed at the February 28th workshop, CALTEL strongly disagrees with staff’s decision to apply a “filter” to the list of 46 areas of interest that removes any area that is “partially served by fixed wireless.”²

This is not because CALTEL’s members are “anti” fixed wireless---as mentioned previously, some CALTEL members deploy fixed wireless as well as Wi-Fi solutions³ for residential and business customers in otherwise hard-to-serve areas. But there are a number of limitations to fixed wireless that the Commission knows all too well, as summarized in the Whitepaper itself and the Commission’s final decision in the Competition OII proceeding (D.16-12-025):

...CD staff experience has shown that the existence of fixed-wireless providers does not guarantee availability to all households within a census block. The majority of fixed-wireless service areas do not provide 100 percent availability at served speeds due to factors such as terrain and trees. Accurate consideration of mobile and fixed-wireless service availability requires case by case review.⁴

...CASF regional consortia grantees and community members have expressed a preference for wireline service.⁵

Fixed wireless may be less costly than a wired solution but it is not a panacea. Spectrum costs (and issues with unlicensed spectrum), line-of-sight technological limitations, and the persistent need for backhaul, are all potential problems with fixed wireless.⁶

As discussed above, the market share of fixed wireless providers may also not be fully invisible (sic) to us. Information submitted by the parties is at times at odds

² *Id.* at p. 8.

³ The glossary appended to the Commission’s final decision in the Competition OII (D.16-12-025 in I. 15-11-007) defines fixed wireless service as “A radio communication service between specified fixed points. Does not include communication by Wi-Fi or by mobile communications protocols.”

⁴ Whitepaper at p. 3.

⁵ *Id.*

⁶ D.16-12-025 at p. 113.

with what is observed in the field, or is internally inconsistent, or simply incorrect.⁷

While fixed and satellite broadband together are “adopted by less than three percent of residential fixed broadband subscribers” nationally, the fixed wireless carriers – when they report at all – often show wide areas of deployment. Dr. Roycroft notes that the granular deployment data submitted to the FCC (and to the Commission under DIVCA) shows near ubiquitous coverage, but might be substantially overstated. . . . Not all fixed wireless providers are licensed by this Commission, and we likely do not have complete data on the fixed wireless market segment.⁸

In summary, while the Commission has recognized the importance of fixed wireless in providing broadband service to customers in rural areas, it has also accurately documented its limitations, most importantly that it is not available to all households in a census block due to technological factors and that it is not available as ubiquitously as reported, if reported at all.

Despite this reality, staff’s “new approach” includes removing any area which includes a census block where one or more customers receive broadband service from a fixed wireless provider, presumably at program-designated speeds, from the list of “high impact” areas. Although the Whitepaper itself does not clarify why this filter was chosen, staff stated at the workshop that avoiding delays associated with analyzing and validating challenges by fixed wireless providers was the primary rationale. Given the unclear purpose of identifying these “high-impact” areas as discussed above, applying this fixed wireless “filter” harms the ability of the remaining end user customers in that census block to get access to broadband, and hands an undeserved competitive advantage/windfall to fixed wireless providers.

Issue 3: Impact on New Applications

Finally, staff’s “new approach” appears unlikely to have the desired result: generating new applications for the identified “high-impact” areas. As one workshop participant noted, there is nothing stopping potential applicants from submitting applications for these areas today. There is similarly no evidence that potential applicants

⁷ *Id.* at p. 121.

⁸ *Id.* at p. 87-89.

are waiting in the wings for the Commission to adopt the proposed fast-track process.⁹ And as previously noted, assuming that staff's assumptions about the lack of fixed wireless competition in these areas are correct, any new application for such an area would fast-track itself. Unless there were other changes to program rules, such as a higher percentage of subsidized funds, it is not clear how or why the Whitepaper proposal would result in new applications for these "high-impact" areas.

Although CALTEL is aware that CASF applicants have a variety of business models, applications from wireline providers like CALTEL's members usually are grounded in business cases that rely on extending networks from already-served areas into contiguous unserved or underserved areas. Assigning geographic areas to lists of high-priority areas does not change the business fundamentals for a given provider or make a non-contiguous area attractive to it. CALTEL believes that in order for the program to truly get "the most bang for the buck," especially in any future phases, stakeholders must recognize that these business realities are as much, if not more, of a factor in program success as factors such as household density and challenging terrain.

Conclusion

For the reasons stated above, CALTEL believes that the Whitepaper should be revised to provide relevant information to stakeholders about the 46 areas of interest that it has analyzed, and to remove the proposed "new approach" with regards to identifying "high impact" areas. CALTEL appreciates the opportunity to provide input on the staff Whitepaper, and looks forward to participating in future CASF program workshops.

Sincerely,

/s/Sarah De Young

Sarah DeYoung
Executive Director – CALTEL

⁹ The Whitepaper notes that the current "high priority" designation "has not in itself affected which projects are approved, now is it clear to staff that the identification of 'high priority' areas has directly led to more grant applications." Whitepaper at pp. 5-6. CALTEL submits that, for the reasons discussed in these comments, this will also be the outcome of the new "high impact" designation.