

**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 TELLUS VENTURE ASSOCIATES
ON THE ORDER INSTITUTING RULEMAKING
TO CONSIDER MODIFICATIONS TO
THE CALIFORNIA ADVANCED SERVICES FUND**

Stephen A. Blum
President
Tellus Venture Associates
3138 Lake Drive
Marina, CA 93933
Phone: 831-582-700
Email: steveblum@tellusventure.com

December 18, 2012

Tellus Venture Associates respectfully submits its reply comments in the Order Instituting Rulemaking (OIR) to Consider Modifications to the California Advanced Services Fund (CASF)¹.

I. INTRODUCTION

Tellus Venture Associates is a consultancy serving publicly owned public utilities, community broadband systems, independent Internet service providers and other broadband-related companies and organizations in California. Judiciously expanding eligibility for California Advanced Services Fund (CASF) grants and loans will greatly improve the ability of all Californians to access broadband services and receive the benefits those services provide.

II. RESTRICTION OF FUNDING TO UNSERVED AREAS

The California Cable & Telecommunications Association (CCTA) proposed in its opening comments² to restrict applications from non Certificate of Public Convenience and Necessity (CPCN) and Wireless Identification Registration (WIR) holders to just unserved areas, making them ineligible to apply for funding in underserved areas. Combined with its assertion of non-opposition to the Commission's contemplated expansion of eligibility, CCTA's proposal is baldly disingenuous.

Creating restrictions that deliberately put non CPCN/WIR holders at a market disadvantage to CPCN/WIR holders would serve the interests of incumbents at the expense of the public. A viable business plan to provide service in an unserved area would likely require some access to adjacent underserved areas. Further, by first providing service to an underserved area, an applicant could build the necessary supporting infrastructure that would make it possible

¹ Order Instituting Rulemaking 12-10-012 (issued Oct 25, 2012).

² Opening Comments of the California Cable & Telecommunications Association on the Order Instituting Rulemaking to Consider Modifications to the California Advanced Services Fund, R. 12-10-012 (December 3, 2012).

to extend service to unserved areas. As a rule, underserved areas are more densely populated than unserved areas and may add enough potential subscribers and sufficiently reduce per household costs to turn a bad business case into a successful one.

Further, unserved and underserved areas are frequently intermixed. Restricting funding to only unserved areas could result in irrational business cases and effectively deny service to all.

III. PUBLICLY OWNED UTILITIES

CCTA would further constrain the ability of publicly utilities, particularly those operated by units of local government, to apply for CASF funding. In its comments, CCTA offers unjustified, self-serving criticism of publicly owned public utilities.

In rural and remote areas of California, publicly owned public utilities provide vital, effective and professionally managed services to communities that do not attract the interest of investor-owned utilities. In urban areas, publicly owned public utilities are affordable and reliable, and set a service benchmark that is often unattainable by investor-owned utilities operating in an adjacent jurisdiction. The purpose of CASF is to provide modern telecommunications service to the difficult-to-reach areas and communities that publicly owned public utilities were created to serve.

Publicly owned public utilities have established and recognized mechanisms for ensuring public accountability. The financial and managerial capabilities of publicly owned public utilities are at least as open to scrutiny and evaluation as those of privately owned corporations, and in most cases more so.

Publicly owned public utilities have the professional expertise, institutional experience and familiarity with industry standards and practices common to all responsible California

utilities. The burden imposed by publicly owned public utilities on the Commission would be no greater than that imposed by incumbent CPCN or WIR holders.

CCTA proposes that the Commission require publicly owned public utilities conduct “a public hearing, be approved by the voters, and that use of any locally–owned utility not be assumed in the financial assumptions for operating the network.”³

Such measures may, in various circumstances, be advisable. It might likewise be advisable for an investor owned utility to submit business proposals to a vote of shareholders or to disregard certain assumptions in its planning. Until and unless the Commission similarly constrains investor-owned public utilities, putting such requirements on publicly owned public utilities would only serve the anti-competitive objectives of incumbents.

Further, as with corporate governance matters, the conduct of local government units is well regulated. The California Legislature, California Constitution and the electorate already provide extensive and entirely adequate oversight of local governments.

IV. CPCN ADVANTAGES

Several commenters spoke to the advantages a CPCN confers, both to the service provider concerned (e.g. attachment rights) and to the Commission (e.g. oversight). Should the Commission expand CASF eligibility, is entirely possible that a non-CPCN holder would be at a serious disadvantage if it did not enjoy the privileges and obligations of CPCN holding competitors. The Commission should consider how to mitigate this disadvantage, including the alternative of revising CPCN eligibility rules and procedures.

³ CCTA Comments at page 3.

V. RECOMMENDATIONS

Tellus Venture Associates requests that insofar as non CPCN/WIR holders are eligible for CASF funding, they have equal access to underserved and unserved areas alike, and face no greater restrictions in that regard than CPCN/WIR holders.

We also request that publicly owned public utilities be given the same eligibility as and face no greater constraints than CPCN and WIR holders in applying for CASF funding. Further, we ask that should the Commission decide not to generally expand CASF eligibility to all non CPCN/WIR holders, it consider specific eligibility for bona fide publicly owned public utilities.

Finally, we request that the Commission expand the scope of the rulemaking to consider the various requirements and classes of CPCN eligibility, either in conjunction with the expansion of CASF eligibility or as an alternative.

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Respectfully submitted,

Tellus Venture Associates, a California Sole Proprietorship

/s/ Stephen A. Blum

Stephen A. Blum
President
Tellus Venture Associates
3138 Lake Drive
Marina, CA 93933
Phone: 831-582-700
Email: steveblum@tellusventure.com