



June 11, 2014

Via U.S. Mail and E-Mail

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

Re: **Small LECs' Opening Comments on Draft Resolution T-17443
Addressing Modifications to the CASF Program**

Dear Mr. Dulin:

Pursuant to Rule 14.5 of the Commission's Rules of Practice and Procedure ("Rules"), and in accordance with the Notice of Availability from the Communications Division dated May 27, 2014, the Small LECs¹ hereby offer these opening comments on Draft Resolution T-17443 ("Draft Resolution"). The Draft Resolution addresses the California Advanced Services Fund ("CASF") program modifications set forth in Senate Bill ("SB") 740, which expands the CASF program to non-telephone corporations and local government entities. The Draft Resolution would also establish new application deadlines for CASF funding and implement a process for existing broadband providers to exercise their right of first refusal opportunity.

In order to meet the Commission's goal of providing broadband access to at least 98% of California households by December 31, 2015, the Draft Resolution would require existing broadband providers to exercise their right of first refusal before the first CASF application deadline on October 1, 2014, and would require service upgrades to be completed by April 1,

¹ 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), and Winterhaven Telephone Company (U 1021 C) (the "Small LECs").

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2015. While the Small LECs support the Commission's commitment to achieving a 98% broadband penetration rate in California, the Small LECs are concerned that the timelines are overly optimistic and may, as a consequence, result in inefficient use of CASF funds and resources. The Small LECs believe that targeted revisions to the proposed implementation of SB 740 will better assist the Commission in achieving its broadband penetration goals, while ensuring the most efficient use of CASF funds.

First, the Small LECs recommend including an additional process by which current broadband service providers may voluntarily correct and update the Commission's broadband availability maps. The Small LECs believe that starting with a process to upgrade maps and then providing an opportunity for periodic updates will ultimately reduce the delays in processing CASF applications by minimizing challenges to applications that inadvertently include areas that are erroneously shown as unserved or underserved on the Commission's maps.

Second, the Small LECs disagree that the right of first refusal opportunity should be limited to just the period before the first application period. However, if the Commission adopts this limitation, the April 1, 2015 deadline for service providers to complete facilities upgrades should be eliminated in order to accommodate legitimate geographical, environmental, and demand-related factors impacting construction timelines in rural and remote areas.

Third, the Draft Resolution should continue to promote the efficient use of CASF funding by clarifying that all CASF applications may be challenged if they request funding to serve areas already served by existing broadband providers.

I. Broadband Providers Should be Provided with the Means to Voluntarily Correct and Update the Commission's Broadband Availability Maps.

In order to ensure the efficient use of CASF funding, the Draft Resolution should incorporate a process that allows current broadband service providers to voluntarily update the Commission's broadband availability maps. Based on the Small LECs' experiences during the last round of CASF applications, the Commission's broadband maps may not accurately reflect whether or not a service area is currently capable of being served at 6mbps/1.5mbps speeds. Since these maps were not updated at the start of the process, applications were submitted for project areas that were already served at 6mbps/1.5mbps speeds by existing service providers. In order to avoid the improper CASF funding of applicants seeking to provide service to areas that were already served, existing broadband providers successfully challenged those applications to ensure that CASF funds were reserved for their intended purposes. Naturally, those challenges delayed the processing and approval of the non-objectionable portions of those applications and the projects themselves. Further, the applicants themselves went through unnecessary expense in preparing responses to challenges based on submissions which should never have been filed based on the erroneous mapping data. As a result, the Small LECs believe that providing service providers with the voluntary opportunity to update the broadband availability maps at the start of

this round of applications and periodically thereafter will further the Commission's goal of achieving 98% broadband penetration by December 31, 2015 by promoting efficiency through the reduction of the need to address challenges to and amendments to applications for CASF funding.

II. The Draft Resolution Should Modify its Proposal to Implement the Right of First Refusal Process and the Proposed April 1, 2015 Deadline for Existing Service Providers to Complete their Facilities Upgrades Should be Eliminated.

The Small LECs disagree with the Draft Resolution's rationale for requiring existing broadband service providers to exercise their right of first refusal opportunity before the first CASF application to the extent that it implies that service providers are intentionally delaying or evading upgrades to facilities. The suggestion that broadband service providers would only implement service upgrades if another entity expressed an interest in serving their particular service areas ignores the numerous factors that impact a service provider's ability to initiate facilities upgrades in the geographically inhospitable regions that generally characterize unserved or underserved areas. Since the Small LECs serve some of the most rural parts of the state and generally provide a higher level of broadband service in these areas than other carriers serving rural areas, the Small LECs object to any suggestion that they are not fully engaged in meeting the needs and demands of their customers.

The Small LECs also believe the intent of the right of first refusal opportunity provided by SB 740 is to ensure the efficient use of CASF funding by preventing the funds from being used to overbuild an area that already has an existing facilities-based provider that is able to upgrade existing facilities in a reasonable timeframe. There are many factors to consider when making the decision to upgrade facilities, including costs, current customer demand for higher bandwidth speeds, and competing priority projects. It is not a reasonable expectation that all currently underserved areas, as defined by the Commission, can be upgraded to served speeds within a set timeframe. Just because an area is defined as underserved, that does not mean it is not the intent of the existing facilities-based provider to continue to upgrade its facilities to meet customer demand, including areas identified as unserved. The Small LECs believe it would be a misuse of CASF funds to provide funding to an entity that is not a telephone corporation to build a competing network in an area that has an existing facilities-based provider willing to upgrade existing facilities in a reasonable timeframe.

To meet SB 740's goal in this respect, the Commission should implement the right of first refusal requirement by allowing existing facilities-based providers the opportunity to respond to an application for providing service in their area by demonstrating to the Commission that it will, within a reasonable timeframe, upgrade existing service as required by SB 740.

Notwithstanding these flaws, if the Commission proceeds with requiring existing broadband providers to exercise their right of first refusal opportunity in advance of the first

CASF application deadline, the proposed April 1, 2015 deadline for existing service providers to complete their facilities upgrades should be eliminated. The proposed six-month timeframe proposed by the Draft Resolution is not only inconsistent with 24-month time period currently allowed pursuant to the CASF Guidelines,² it also does not account for the need for more flexible construction timelines for projects in extremely rural areas that are remote, rugged, and inhospitable. These conditions therefore often require more time for construction than would be needed in less rural areas. To compound the problem, the proposed six-month timeframe outlined by the Draft Resolution would require construction activities to take place between October 2014 and March 2015, winter months when many of the extremely remote areas characterizing unserved and underserved areas are inaccessible for construction or closed completely due to extreme weather conditions. The Small LECs urge the Commission to consider these environmental and geographical limitations on the rural service providers' abilities to complete upgrades to their facilities despite their best efforts. For this reason alone, the April 1, 2015 deadline is arbitrary and capricious and should be eliminated.

The April 1, 2015 deadline would also be problematic for broadband service providers that intend on applying for CASF funding to support facilities upgrades, as allowed under SB 740. Since many unserved or underserved areas are often rural and remote, it is likely that service providers could only justify costly upgrades to their facilities with the assistance of funding through the CASF program. However, without the certainty that an application or grant will be awarded, these service providers could not be expected to initiate upgrades to their facilities. Since the processing of a CASF application takes a minimum of 84 days, or almost three months,³ assuming best case scenario, an existing broadband service provider relying on a CASF grant could not even begin to initiate service upgrades until approximately January 2015. With an April 1, 2015 deadline to complete the project, such broadband service providers would only have three months to complete their upgrades under the challenging construction and winter conditions described earlier. This would be an impossible task. Moreover, based on the Small LECs' experiences in applying for these grants, the processing of these applications generally extends beyond three months due to challenges, verifications, or necessary amendments to the CASF applications. Without the certainty of the CASF grant, compounded by the natural challenges of constructing facilities in rural areas, broadband providers could not reasonably be expected to meet an April 1, 2015 deadline for facilities upgrades and this requirement should be removed.

² Broadband Infrastructure Grant Account – Revised Application Requirements and Guidelines ("CASF Guidelines"), at p. 9

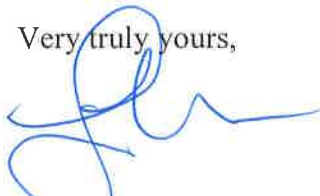
³ CASF Guidelines, at p. 17.

III. The Draft Resolution Should Be Modified to Clarify That Broadband Service Providers Will Continue to Have the Opportunity to Challenge Applications Requesting CASF Funding in Served Areas.

Based on the CASF Guidelines, the Small LECs understand that broadband service providers will continue to have opportunities to challenge CASF applications requesting funding to provide service in areas that are already served at 6mbps/1.5mbps. However, based on the proposed program changes and the aggressive timelines outlined in Draft Resolution, it may be unclear whether the challenge process is preserved in the application process. The Small LECs respectfully request that the Draft Resolution be modified to clarify that the challenge process remains in place without exception for all broadband service providers, as it is an important tool for ensuring that CASF funds are only allocated to those areas that are truly unserved or underserved. In addition, the Draft Resolution should also be modified to specify that broadband providers may challenge applications regardless of whether the existing broadband provider exercised their right of first refusal or voluntarily updated the broadband availability maps. This simple clarification will eliminate potential uncertainty and provide significant benefits to the CASF program, by ensuring that funding is administered in a manner consistent with the program's goals.

The Small LECs urge the Commission to address the concerns identified in these comments by adopting the modifications discussed above. For ease of reference, the Small LECs have also prepared proposed revisions to the rules presented in Appendix I to the Draft Resolution. These proposed revisions are provided herewith as Attachment A. Should you have any questions, please contact Lisa Tse at ltse@cwclaw.com or at 415-765-6245.

Very truly yours,



Lisa P. Tse

LPT:ncg

Attachments

cc: John Baker (john.baker@cpuc.ca.gov)
Draft Resolution T-17443 Service List

ATTACHMENT A

to
SMALL LECS' OPENING COMMENTS
on
DRAFT RESOLUTION T-17443

PROPOSED MODIFICATIONS TO APPENDIX 1 IF AN EXISTING BROADBAND PROVIDER IS NOT REQUIRED TO EXERCISE ITS RIGHT OF FIRST REFUSAL BEFORE THE FIRST CASF APPLICATION DEADLINE

APPENDIX 1

Rules on the participation of non-telephone corporations in the California Advanced Services Fund

The following rules are adopted to implement rules initiated by Senate Bill 740, which places conditions on the participation of non-telephone corporations in the California Advanced Services Fund.

1. An existing broadband provider may provide information to the Communications Division to update the Commission's broadband availability maps as new information becomes available.
2. An existing broadband provider must submit a letter by September 26, 2014 to the Director of the Communications Division, as shown in Appendix 3, in order to indicate its intent to upgrade its broadband network in its existing territory.
2. The existing provider will have until April 1, 2015 to complete the project by upgrading its network to served speeds. During those six months (or first two application rounds), the CPUC will not grant CASF funds to any other broadband provider in that same project area.
3. An existing broadband provider that exercised its right of first refusal must, aAt project completion, the Commission will require the provider to submit documents showing the project area, broadband availability and the speed tiers available with speed tests showing that the completed project indeed provides served speeds or 6 mbps downstream and 1.5mbps upstream.
4. Where an existing broadband provider fails to finish a project to provide served speeds or 6 mbps downstream and 1.5mbps upstream within 24 months by April 1, 2015, the Commission may grant CASF funds for a broadband project in that area.
5. A non-telephone corporation is only eligible to apply for projects which "provide last-mile broadband access to households that are unserved by an existing facilities-based provider."

6. If, after six months (or two application rounds), no entity has applied for funds for an unserved area, a local government entity will be permitted to apply for funds to serve that unserved area.

7. The CPUC will accept applications on a quarterly basis with the first application round opening October 1, 2014, then January 1, 2015; April 1, 2015; July 1, 2015; October 1, 2015; and January 1, 2016.

8. Any broadband provider will have the opportunity to challenge a CASF application for the reasons outlined in the CASF Guidelines, regardless of whether the broadband provider exercised its right of first refusal opportunity or whether the broadband provider provided updates to the broadband

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