

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**Communications Division
Broadband, Video and Market Branch**

**RESOLUTION T-17590
December 14, 2017**

R E S O L U T I O N

Resolution T-17590— California Advanced Services Fund Interim “Right of First Refusal” Processes and Timelines for Existing Facility-based Broadband Providers

SUMMARY

This Resolution updates Resolution T-17443 to establish new processes and timelines for an existing facilities-based broadband service provider (existing provider) to invoke its “right of first refusal” (ROFR) pursuant to Assembly Bill (AB) 1665 (Chapter 851, Statutes of 2017). Specifically, this Resolution describes how the California Public Utilities Commission (Commission) will provide an existing provider with an opportunity to demonstrate that it will deploy broadband or upgrade existing facilities to a delineated unserved area within 180 days of submitting its right of first refusal demonstration letter. The Commission will accept ROFR demonstration letters by January 15, 2018 and annually on this date until 2022 (i.e. January 15, 2019, January 15, 2020, January 15, 2021, and January 15, 2022). This resolution uses the review criteria established in Resolution T-17443, that allow an additional six months to complete deployment due to a) permitting issues, b) compliance with the California Environmental Quality Act (CEQA); or c) weather or other acts of God; and defers to a rulemaking-proceeding the adoption of a final ROFR procedure including a review of the T-17443 criteria to determine if an ROFR designation should be extended beyond 180 days.

BACKGROUND

During the 2013-2014 Legislative Session, the Legislature passed SB 740 to expand eligibility for the California Advanced Services Fund (CASF) Program’s Infrastructure Grant Account.¹ One of the requirements of SB 740 was to give existing providers the

¹ Senate Bill (SB) 740 (Padilla) Stats. 2013 Ch. 522, amending Public Utilities (Pub. Util.) Code, § 281.

opportunity to upgrade their networks in areas that were defined as underserved households before funds are awarded to a non-telephone corporation that did not have a Certificate of Public Necessity and Convenience (CPCN) or a Wireless Identification Registration (WIR).

In June 2014, the Commission approved Resolution T-17443, which authorized existing broadband providers to file a claim by November 1, 2014 if they chose to use their own funds to upgrade their networks to address underserved communities in their service territory.² An existing provider had until May 1, 2015 to complete the claimed upgrade. During that time, the Commission would not award a CASF infrastructure grant to fund a broadband project to a non-CPCN holder in the same project area. Resolution T-17443 did not provide an opportunity to submit an ROFR beyond November 1, 2014. Further, Resolution T-17443, allowed continuation of ROFR projects for an additional six months beyond May 1, 2015 due to permitting issues; issues related to compliance with the California Environmental Quality Act (CEQA); or weather or other acts of God.³

On October 15, 2017, the Governor signed AB 1665. Among other things, AB 1665 required the Commission to annually offer an existing provider the opportunity to demonstrate that it will deploy broadband or upgrade existing facilities to a delineated unserved area within 180 days of its demonstration. In addition, AB 1665 required that if the existing provider is unable to complete the deployment of broadband within the delineated unserved area within 180 days, the provider shall inform the Commission about progress made or challenges faced in completing the deployment. The statute states, if the Commission finds that the provider is making progress towards the completion of the deployment, the Commission shall extend the time to complete the project beyond the 180 days. If the existing provider demonstrates to the Commission, in response to the annual ROFR, that it will deploy broadband or upgrade existing broadband service throughout the project area, the Commission cannot approve funding to any other provider for a project to deploy broadband in the delineated area.⁴

DISCUSSION

This Resolution updates Resolution T-17443 to establish new processes and timelines for the Commission to receive annual ROFR claims, and for existing providers to apprise the Commission of their network buildouts and upgrades. Each year, Commission staff

² Resolution T-17443 required existing providers choosing to make a commitment to upgrade to submit a letter to the Director of the Communications Division and email a copy to the CASF distribution list. (See Resolution T-17443, pp. 5 and Appendix 3).

³ Id at p. 6.

⁴ AB 1665 (Garcia) Stats. 2017 Ch. 851, amending Pub. Util. Code, §§ 281, 912.2, and 914.7. Note that the ineligibility is to any other provider, regardless of CPCN status.

publishes a map of broadband availability and CASF program eligibility. In order for program eligibility to be accurately determined, the published map must contain a representation of ROFR areas. As such, this Resolution will provide the opportunity for existing providers to timely exercise their ROFR and the Commission to publish an eligibility map consistent with the requirements set forth in AB 1665. There is a public interest need to have the Commission implement the ROFR process along with the other AB 1665 program eligibility publishing requirements,⁵ so that communities and applicants can be provided with accurate information regarding eligible areas for CASF grants. Further, the ROFR information will inform the Commission about existing provider planned investments resulting in improved program efficiency.

We prefer to address the ROFR through a Commission decision. Since that will take time, and in order to have timely ROFR designated area information by early 2018 to include in our determination of eligible regions, this resolution retains, on an interim basis, the criteria set forth in T-17443 as the framework for evaluating ROFR extensions until the Commission considers and issues a final rule in a subsequent Commission decision. Per Resolution T-17443, extensions may be granted if evidence is provided that progress has been delayed due to permitting issues; issues related to compliance with the California Environmental Quality Act (CEQA); or weather or other acts of God. The process for applying for and maintaining ROFR designations is set forth below.

1. Annual ROFR Demonstration Letter

The ROFR process starts in 2018 and repeats itself on an annual basis, until 2022. Every year, an existing broadband provider has until January 15th to submit a letter to the Communications Division (CD) Director with a copy to the CASF distribution service list, demonstrating its intent to upgrade services to households at served speeds within 180 days. The letter must include:

- a) Area designated for broadband deployment by census block or geospatial file, such as .kmz or shapefile;
- b) The number of households or locations to be served;
- c) A commitment to ensure that all households within the area will have the capability to receive minimum speeds;
- d) An estimate of the date (within the 180 day statutory requirement) by which the deployment will be completed with service available to the public.

⁵ Other AB 1665 requirements for inclusion in the eligibility map include the new 6 Mbps download and 1 Mbps upload program eligibility speed criteria and depiction of the Connect America Fund designated areas.

During this time, the Commission will not award a CASF grant to fund a broadband infrastructure project to any other provider in the designated project area. Should a ROFR demonstration letter be received following January 15th, it shall not be considered until January 15th of the subsequent year.

2. ROFR Publication

All compliant ROFR demonstration letters will be published on the Commission's website by January 31st of each year. In addition, the Broadband Availability Map will indicate the ROFR areas as infrastructure grant ineligible.

3. ROFR Project Completion Report

An existing provider will have 180 days thereafter, by July 15th, of each year to complete the project to all households in the project area at served speeds. Sixteen days following completion of the project, or no later than July 31 of each year, the ROFR provider shall submit an ROFR project completion report to the CD Director, inclusive of the following:

- a) An attestation that all households within the ROFR project area are offered service and have the capability to receive minimum speeds of 10 Mbps download and 1 Mbps upload.
- b) Documentation of the advertisements and/or notices provided, or to be provided all households in the project area of the availability of service at or above the aforementioned minimum speeds.
- c) Identification of the number of served households in the project area that have broadband availability at or above the aforementioned minimum speeds.
- d) The geographic location of all households that are served. This information should be provided in a plain-text, comma-separated values (CSV) file, that contains geo-located street address information, including latitude and longitude coordinates. (See Appendix 1 for data submission format)
- e) CalSPEED test results indicating download and upload speeds at dispersed locations in the project area, with geographic locations identified. CalSPEED is available at <http://www.calspeed.org/>.

4. ROFR Extension Request: If an existing provider is unable to complete deployment of broadband within 180 days in the delineated ROFR unserved project area, the provider must, on or before each July 15th, provide the following information to the CD Director:

- a) Project status: A description of the progress that has been made and challenges faced in completing the project due to permitting issues; issues

- related to compliance with the California Environmental Quality Act (CEQA); or weather or other acts of God;
- b) Date upon which the project will complete;
 - c) Copy of project permits;
 - d) Project area engineering and construction plans.

Item d) may be submitted to the CD Director confidentially.

Staff will update the Broadband Availability Map to reflect any changes to the ROFR designations based on compliant project completion or extension requests.

COMMENTS

In compliance with Pub. Util. Code section 311(g), a copy of this proposed Resolution was either mailed or e-mailed to all parties of record in R.12-10-012 and the CASF distribution list on November 14, 2017.

CD received comments on the draft resolution from David Espinoza, manager of Northeastern California Connect Consortium and Upstate California Connect Consortium (NECCC and UCCC) and California Emerging Technology Fund (CETF).

NECCC and UCCC state the following:

1. The Commission should establish a penalty applicable to providers that file an ROFR but do not complete it within six months or within the approved extension period. If the provider does not deploy within this period, the area becomes eligible for CASF funding for any provider.
2. On Section 3, "ROFR Project Completion Report," the minimum provided speeds should be similar to speeds (10 Mbps/1 Mbps) required to new deployment eligible for CASF grant awards, instead of 6 Mbps/1 Mbps.
3. On Section 4, "ROFR Extension Request," ROFR and extension requests should only be valid once each for a specific geographic area. There should not be repeated extensions of a ROFR.
 - i. If an existing provider wishes to assert an ROFR, the Commission should ensure that the provider has done the necessary preparatory work that will allow them to complete the build within six months. Extensions should not be granted where a provider has not exercised due diligence in preparing their project, but only for unforeseeable circumstances. NECC and UCCC believe that this standard is demonstrated for permitting or CEQA issues by the submittal of complete permit applications and submittal of all information needed by a lead agency to initiate environmental review. This should be met by July 15, 2018 for the first year of the annual ROFR process,

and should be met on the date of asserting a ROFR area for 2019 and subsequent years.

CETF states the following:

1. CETF strongly opposes the draft resolution as written because it could be interpreted to be rolling protectionism for large incumbents that locks in old technology and blocks the opportunity for fair participation by smaller companies.
2. CETF requested a clarifying letter from the authors of AB 1665 who have not yet provided a written position. According to CETF, the authors made statements to the effect that they did not intend by the language in the statute to block the opportunity for smaller companies to participate in the CASF.
3. There must be explicit language that requires Staff to publish annually after the incumbents submit their "ROFR Demonstration Letter" which areas are open for submission of proposals by other applicants.
4. The rules must provide that if other applicants submit proposals for areas not identified in the ROFR Demonstration Letters in any given year that there may not be subsequent challenges to a proposal for those unidentified areas based on an incumbent's subsequent ROFR Demonstration Letter or other assertion of intent to serve.
5. The rules for ROFR must not allow "several bites at the apple" which is tantamount to annual vetoes on other providers' applications.
6. CETF also attached a copy of its comments submitted in response to CD CASF Staff Proposal dated June 14, 2017.

Staff response:

NECCC and UCCC

1. The issue of whether and how to establish a penalty for those providers who establish a ROFR and then do not complete their project within the allowable period will be deferred to proceeding R.12-10-012.
2. Staff agrees with NECCC and UCCC because AB 1665 established a new 10 Mbps downstream and 1 Mbps upstream build standard and a new 6 Mbps downstream and 1 Mbps upstream eligibility standard. Staff had misapplied the eligibility standard where the build standard should have been used. Staff thanks the consortia for pointing this out and have made changes accordingly in Section 3.
3. The Resolution and AB 1665 allows an extension but does not address the length of the extension or the number of times a provider may assert the ROFR. Staff defers the issue on extensions to proceeding R.12-10-012.

CETF

1. The purpose of this resolution is to establish new processes and timelines for an existing provider to invoke its ROFR pursuant to AB 1665.
2. Staff implements AB 1665 as written.
3. As explained in Section 2 "ROFR Publication," all compliant ROFR demonstration letters will be published on the Commission's website by January 31st of each year. In addition, the Broadband Availability Map will indicate the ROFR areas as infrastructure grant ineligible.
4. The issues of challenge and application processes will be deferred to proceeding R.12-10-012.
5. Other rules for ROFR not addressed in this resolution will be deferred to proceeding R.12-10-012.
6. Other AB 1665 implementation proposals will be deferred to proceeding R.12-10-012.

FINDINGS

1. In June 2014, the Commission approved Resolution T-17443 allowing existing broadband providers to submit a letter a letter by November 1, 2014 to the Director of the Communications Division to make a commitment to upgrade within six months its broadband networks in its existing underserved territories to served speeds using its own funds.
2. Pursuant to AB 1665, the Commission shall annually offer an existing facility-based broadband provider the opportunity to demonstrate that it will deploy broadband or upgrade existing facilities to a delineated unserved area within 180 days of the demonstration.
3. Pursuant to AB 1665, if the existing provider is unable to complete the deployment of broadband within the delineated unserved area within 180 days, the provider shall provide the Commission with information to demonstrate what progress has been made or challenges faced in completing the deployment.
4. Pursuant to AB 1665, the Commission shall not approve funding for a project to deploy broadband to a delineated unserved area if the existing provider demonstrates to the Commission, in response to the annual ROFR, that it will deploy broadband or upgrade existing broadband service throughout the project area, unless the Commission finds that the provider is not making progress towards completing the deployment.

5. Until the Commission in a rulemaking determines otherwise, the T-17443 criteria of allowing an additional six months due to a) permitting issues, b) compliance with the California Environmental Quality Act (CEQA); or c) weather or other acts of God, is reasonable.
6. It is reasonable to require an existing provider who chooses to deploy or upgrade existing facilities in a delineated unserved area within 180 days to submit a demonstration letter to the Director of the Communications Division, containing; a) the number of households or locations to be served; b) all households within the area that will have the capability to receive minimum speeds; and c) the estimated date by which the deployment will be completed; by January 15, 2018, January 15, 2019, January 15, 2020, January 15, 2021, and January 15, 2022.
7. It is reasonable for staff to publish ROFR commitments and map layers by January 31, 2018, January 31, 2019, January 31, 2020, January 31, 2021, and January 31, 2022.
8. It is reasonable to require an existing provider which chooses to deploy or upgrade existing facilities to a delineated unserved area within 180 days to submit an ROFR extension request by July 15, 2018; July 15, 2019; July 15, 2020; July 15, 2021; and July 15, 2022.
9. It is reasonable to require an existing provider which chooses to deploy or upgrade existing facilities to a delineated unserved area within 180 days to submit its ROFR completion report by July 31, 2018; July 31, 2019; July 31, 2020; July 31, 2021; and July 31, 2022.
10. A notice letter was emailed on November 14, 2017, informing all parties on the CASF Distribution List of the availability of the draft of this Resolution for public comments at the Commission's documents website at <http://www.cpuc.ca.gov/documents/>. This letter also informed parties that the final conformed Resolution adopted by the Commission will be posted and available at the same website. CD received two comments, which are addressed in the "Comments" section.

THEREFORE, IT IS ORDERED that:

1. An existing broadband provider which chooses to deploy broadband or upgrade existing facilities to an unserved area within 180 days must submit an ROFR Demonstration Letter, as described herein, to the Director of the Communications Division, at cdcompliance@cpuc.ca.gov, with a copy to the CASF distribution service

list, by January 15, 2018, January 15, 2019, January 15, 2020, January 15, 2021, and January 15, 2022.

2. Following project completion, by July 31, 2019, July 31, 2020, July 31, 2021, and July 31, 2022, the provider claiming the ROFR must submit an ROFR Project Completion report, as described herein, to the Director of the Communications Division at cdcompliance@cpuc.ca.gov.
3. If an existing provider is unable to complete the deployment of broadband within the delineated unserved area within 180 days, the provider must on or before July 15, 2019, July 15, 2020, July 15, 2021, and July 15, 2022, submit an ROFR Extension Request, as described herein, to the Director of the Communications Division at cdcompliance@cpuc.ca.gov.

TIMOTHY J. SULLIVAN
Executive Director

APPENDIX

Appendix 1

DATA SPECIFICATIONS FOR BROADBAND DEPLOYMENT BY LOCATION

Please submit your data using the corresponding '*Broadband Deployment Location.csv*'
Template.

[ftp://ftp.cpuc.ca.gov/Telco/CASE/ROFR/Broadband Deployment by Location.csv](ftp://ftp.cpuc.ca.gov/Telco/CASE/ROFR/Broadband%20Deployment%20by%20Location.csv)

ALL FIELDS ARE REQUIRED EXCEPT FOR LOCATION ID AND CARRIER ID:

Field	Description	Type	Example
DBA Name	Doing Business As (DBA) The name of the entity customers could contact to purchase service.	Text	AAA Company
FRN	Provider FCC Registration Number – available at https://apps.fcc.gov/coresWeb/publicHome.do (ONLY numbers no other characters)	Text	0008402202
Latitude	Latitude of the location to which you have made service available. It must have at least 6 decimal places. Coordinates must be in the WGS84 or NAD83 geographic coordinate system.	Float	37.780479
Longitude	Longitude of the location to which you have made service available. It must have at least 6 decimal places. Coordinates must be in the WGS84 or NAD83 geographic coordinate system.	Float	-122.421017
Date of Deployment	The date on which you made service available to this location. Service is “available” if the location can receive service within 10 business days of a service request. While the year must be 4 digits, you can enter single digit months e.g., 01/01 or 1/1 = January 1.	Date	02/28/2018 or 2/28/2018

Technology of Transmission (Technology)	<p>Category of technology for the provision of Internet access service used by the portion of the connection that would terminate at the end-user location (premises).</p> <p>Acceptable codes for this section are:</p> <p>10 = Asymmetric xDSL 11 = ADSL2, ADSL2+ 12 = VDSL 20 = Symmetric xDSL* 30 = Other Copper Wireline (all copper-wire based technologies other than xDSL; Ethernet over copper and T-1 are examples) 40 = Cable Modem other than DOCSIS 1, 1.1, 2.0 or 3.0 41 = Cable Modem – DOCSIS 1, 1.1 or 2.0 42 = Cable Modem – DOCSIS 3.0 50 = Optical Carrier / Fiber to the end user (Fiber to the home or business end user, does not include “fiber to the curb”) 60 = Satellite 70 = Terrestrial Fixed Wireless 90 = Electric Power Line 0 = All Other</p> <p>If different technologies could be used in the two directions of information transfer (downstream and upstream), report the connection in the technology category for the downstream direction.</p> <p>*Symmetric xDSL is a set of technologies distinct from Asymmetric xDSL technologies. Symmetric xDSL services are designed to only operate with equal information-transfer rates downstream and upstream and they are not typically marketed to residential end users.</p>	Integer	41
Maximum Advertised Downstream Bandwidth (Download Speed)	For mass market / consumer broadband services, the maximum advertised downstream bandwidth available in Mbps. You can enter up to 3 places after the decimal (e.g., 768 kbps would be entered as 0.768).	Float	10
Maximum Advertised Upstream Bandwidth (Upload Speed)	For mass market / consumer broadband services, the maximum advertised upstream bandwidth available in Mbps. You can enter up to 3 places after the decimal (e.g., 768 kbps would be entered as 0.768).	Float	1
Address	Number and street address of this location. If possible, use the standardized Postal Service format . If a location	Text	505 Van Ness Ave

	does not have a traditional street address, enter a description of where the served premises is located (e.g., an intersection, a road, etc.).		
City	City	Text	San Francisco
State	Two-letter state postal abbreviation	Text	CA
ZIP Code	ZIP Code	Text	94102
# of Units	The number of units associated with this location. If the address or building contains only one housing unit or business location, enter 1. If the location is a building with multiple units, such as an apartment or office building containing qualifying locations, enter the number units at that location. Each unit should be a separate housing unit or business location and will be counted as an individual location for buildout requirement purposes. You must enter an integer greater than or equal to 1 in this field.	Integer	1
Location ID	The Location ID field is a currently unused field that must be left blank.	Text	12345
Carrier Location ID	The Carrier Location ID field is available for carriers to add their internal ID associated with a location. If you do not have an ID available, this field can be left blank.	Text	12345