

**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

**COMMENTS OF PACIFIC BELL TELEPHONE COMPANY D/B/A AT&T
CALIFORNIA (U 1001 C); AT&T CORP. (U 5002 C); TELEPORT
COMMUNICATIONS AMERICA, LLC (U 5454 C); AND AT&T MOBILITY LLC (NEW
CINGULAR WIRELESS PCS, LLC (U 3060 C); AT&T MOBILITY WIRELESS
OPERATIONS HOLDINGS, INC. (U 3021 C); AND SANTA BARBARA CELLULAR
SYSTEMS LTD. (U 3015 C) ON THE PROPOSED DECISION**

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Pursuant to Commission Rule of Practice and Procedure 14.3, AT&T¹ respectfully submits these Comments on the Proposed Decision (“PD”) by Assigned Commissioner Aceves issued on November 9, 2018. AT&T commends the PD for seeking to improve administration of the California Advanced Services Fund (“CASF”) Broadband Infrastructure Account, but respectfully notes its disappointment that the PD does not adopt many of AT&T’s proposals. AT&T crafted its proposals to simplify and streamline the CASF program in ways that AT&T believes would have improved the program and its efficiency and, importantly, encouraged more participation by internet service providers. Without the adoption of those proposals, the PD seems less likely to achieve those important goals. AT&T also emphasizes that it is narrowly focusing these Comments on legal, factual, and technical errors, and will not repeat the detailed policy and practical arguments set forth in its prior pleadings in support of its key proposals, though it still urges the Commission to consider those arguments in evaluating the PD.

I. DETERMINING GRANT ELIGIBILITY BASED ON SUBSCRIBERSHIP

The PD states that in order to show a census block is “served” by internet service at a speed of at least 6/1, and therefore is not eligible for a CASF-funded project, an internet provider must show that there is at least one *subscriber* to 6/1 or faster service in that census block.² That approach is legal error because it does not comply with AB 1665. As several commenters noted, Public Utilities Code § 281(f)(5)(A) determines a census block’s eligibility for CASF funding based solely on the *availability* of 6/1 or faster internet service in that census block, not

¹ Pacific Bell Telephone Company d/b/a AT&T California (U 1001 C); AT&T Corp. (U 5002 C); Teleport Communications America, LLC (U 5454 C); AT&T Mobility LLC (New Cingular Wireless PCS, LLC (U 3060 C); AT&T Mobility Wireless Operations Holdings, Inc. (U 3021 C); and Santa Barbara Cellular Systems, Ltd. (U 3015 C)).

² PD at 12.

subscribership.³ Availability and subscribership are two separate concepts and are measured separately. By relying on subscribership, the PD uses a different measure than the Legislature chose. The Commission does not have discretion to use such different measures and, in effect, to edit or add words to the statute.⁴ The PD does not address this legal point or attempt to justify the proposed departure from the statute. Moreover, it certainly is possible that a provider could have deployed 6/1 or faster internet service to a census block but not yet obtained any subscribers. In that situation, the PD's proposed measure would allow CASF funding for a census block where 6/1 or faster service undeniably is "available." That would be directly inconsistent with the statute. For these reasons, the Commission should not adopt any measure based on subscribership as part of determining a census block's eligibility for CASF funding.

In addition, the Commission should leave room for parties to rely on efforts at the national level to improve the identification of internet coverage gaps, including proposals by AT&T to the FCC.⁵ Such national efforts may significantly improve carriers' ability to identify internet coverage gaps with granularity.

II. DETERMINING ELIGIBILITY FOR 100% FUNDING

The PD would give up to 40% additional funding for a project that serves low-income households (that is, it would increase funding for a project from 60% up to as much as 100%)

³ Public Utilities Code § 281(f)(5)(A) states that a project is eligible to receive funding if the project employs infrastructure capable of providing internet access at speeds of 10 Mbps downstream/1 mbps upstream (10/1) to "unserved households in census blocks where no provider *offers access* at speeds of at least" 6 Mbps downstream and 1 Mbps upstream (6/1) (emphasis added).

⁴ Cal. Civ. Proc. Code § 1858; *California Fed. Savings & Loan Assn. v. City of Los Angeles* (1995), 11 Cal.4th 342, 349 (citing *Manufacturing Life Ins. Company v. Superior Court* (1995) 10 Cal.4th 257 at 274).

⁵ See FCC, WC Docket Nos. 10-90 & 11-10, Letter of Ola Oyefusi, Director Federal Regulatory, AT&T Services, Inc., to Marlene Dortch, Secretary (filed Oct. 12, 2018).

and areas that only have dial-up internet.⁶ For reasons provided in previous comments, AT&T submits that the Commission should grant 100% funding for projects other than just those in low-income areas and areas that only have dial-up internet. Apart from that, few if any projects, however, will serve *only* low-income households, so this metric should set a specific level for what percentage of households need to be low-income for a project to qualify for the extra 40% funding (or establish a sliding scale to match percentages of low-income households with percentages of added funding). The same adjustment should be made for granting 40% extra funding for serving census blocks that only have dial-up internet.

III. REPORTS BY CAF PROVIDERS

The PD would require providers that receive CAF⁷ funding to file a report by January 15 of each year to specify census blocks where they have deployed internet service, census blocks where they have not decided whether or when they will deploy internet service, and census blocks where they have definitively decided not to deploy internet service (and which would therefore be “surrendered” and eligible for CASF funding).⁸ That proposal is preempted because it conflicts with federal law in a way that thwarts the FCC’s methods and objectives. Specifically, it conflicts with the FCC’s CAF location reporting schedule, under which CAF II providers report the specific locations to which the provider deployed internet service pursuant to its CAF obligations for the prior calendar year.⁹ The FCC requires CAF recipients to file this location information each year by March 1. The Commission should synchronize the reporting

⁶ PD at 22.

⁷ If the Commission adopts a requirement to provide annual reports of actual internet service deployment (as opposed to providing information about blocks to which deployment has not taken place at the time the report is due, which AT&T opposes), the requirement should apply to recipients from all CAF programs.

⁸ PD at 53 and Appendix 1 at 9.

⁹ See 47 C.F.R. § 54.316.

obligations, both ensuring consistency with the FCC’s rules and reducing the reporting burdens on CAF II providers, by accessing CAF II carriers’ location deployment data that is provided to USAC each year by March 1 and posted on the USAC website thereafter (which the Commission can access and then use to update the California Interactive Broadband Map). Nothing in the FCC’s rules requires CAF recipients to specify in advance the census blocks to which they will or will not make internet service available. Requiring them to do so, as the PD proposes, would conflict with the FCC’s CAF obligations framework.

IV. USE OF CALSPEED TO DETERMINE “UNSERVED” STATUS

The PD would allow an applicant to show that a project area is eligible for funding by using a CalSPEED test to show “actual speeds . . . as evidence on *unserved* status.”¹⁰ But CalSPEED cannot be used to prove that an area has *no* internet service. CalSPEED is a speed test, and therefore can be used only where there is an internet connection to use to measure speed.

Even when speed is a relevant factor, carriers should be allowed to use their own speed tests (consistent with FCC guidelines¹¹) to address the main problem with CalSPEED, which is that it measures the performance of test traffic going across multiple service providers and uses the results to gauge the quality of an individual provider’s network.¹² Because that individual

¹⁰ PD, Appendix 1 at 17 (Application Item 6).

¹¹ AT&T opposes the use of CalSPEED test results for the reasons set out in parts III.D and V.C of its Opening Comments. Rather, AT&T recommended using whatever internet service speed test method the FCC adopts. AT&T Phase II Opening Comments at 13-14, 30-32 (Apr. 16, 2018). The FCC recently adopted speed testing requirements for CAF in *In the Matter of Connect America Fund*, WC Docket No. 10-90, *Order*, DA 18-710 (rel. July 6, 2018).

¹² AT&T Phase II Opening Comments at 30.

provider does not have any control over the other service providers and the way they engineer their networks, it should only be judged by tests that evaluate its own network.

V. CONCLUSION

For the reasons states above, AT&T respectfully requests that the Commission make changes to the PD as shown in Appendix 1 hereto.

Date: November 29, 2018

Respectfully submitted,

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APPENDIX 1

AT&T respectfully requests that the Commission make the following changes to the PD:

1. Delete Finding of Fact 9 on page 78.
2. Edit the second bullet point in Appendix 1, § 8.6 (Application Item 6) as follows:

The applicant may provide CalSPEED tests or testing methods authorized by the FCC or that it uses for its own network to show actual speeds as evidence of a lack of 6/1 or faster broadband service availability in a census block, or may use denials of service or other public feedback or information gathered by the FCC as evidence on “unserved” status. The Commission’s public feedback tools are available on the CASF website: www.cpuc.ca.gov/General.aspx?id=5868. Such evidence may be used to dispute the Broadband Map depictions of served status.

3. Edit language in the second full paragraph on page 53 of the PD as follows:

In order to administer the CASF Broadband Infrastructure Fund, the Commission
will require~~Nothing precludes the Commission from requiring a reporting~~
~~requirement on~~ incumbent facilities based broadband providers to provide a report
concerning their CAF II build prior to July 1, 2020. Therefore~~Specifically, by January 15,~~
~~2019~~ March 1, 2019 providers must submit a report that details ~~the completed CAF~~
~~H blocks,~~ the census blocks with locations that the provider has elected not to build to
(and therefore may be eligible for CASF funding) and the blocks the provider has not
determined if it will build. The Commission also will access data on the locations to which
CAF II providers have deployed internet service by accessing the USAC website (HUBB (High
Cost Universal Broadband portal)), which identifies locations to which the carrier has deployed
broadband service pursuant to CAF, and use that information to update the California Interactive
Broadband Map.¹³ This report to the Commission will be submitted annually on January

¹³ “Filing Geolocated Broadband Deployment Data,” at <https://www.usac.org/hc/tools/hubb.aspx>.

~~15~~ March 1 to allow time for competitors and incumbents to formulate applications by the April 1 application deadline, ~~as requested by several parties.~~

4. Edit Appendix 1, page 9, second sentence of the first paragraph of Section 5.1 as follows:

Providers wishing to inform the Commission of their CAF deployment plans must submit a letter by ~~January 15th~~ March 1 of each year to the Communications Division Director with a copy to the CASF distribution service list, detailing the CAF II areas that have been completed and those that the provider is expressing its intent not to upgrade. The Commission can access data on the census blocks where CAF II providers have deployed broadband service by accessing the USAC website (HUBB (High Cost Universal Broadband portal)), which identifies locations to which the carrier has deployed broadband service pursuant to CAF.¹⁴

5. On page 22 of the PD, the Commission should specify the percentage of low-income households in a project area that will qualify an applicant for different levels of additional funding, up to an added 40%. The Commission should do the same for the percentage of households with only dial-up service.

¹⁴ “Filing Geolocated Broadband Deployment Data,” at <https://www.usac.org/hc/tools/hubb.aspx>.