

**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

**REPLY 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 Reply Comments on the Proposed Decision (“PD”) by Assigned Commissioner Aceves issued on November 9, 2018.

1. Number of Rounds of Applications. The PD (at 55-56) establishes a single, annual due date for CASF applications. The Central Coast Broadband Consortium (“CCBC” or “CCB Consortium”) argues that Staff should have discretion to include more rounds of CASF applications.² The Commission should reject that proposal. As explained previously, allowing multiple rounds of applications would make comparison and prioritization of applications much more difficult and less effective. Using a single annual application date should simplify the evaluation and application process and improve the CASF program by allowing head-to-head competition between all applications.

2. Middle-Mile Facilities. Under the PD (at 30), when an applicant and challenger are unable to agree on terms for access to middle-mile facilities, the Commission could determine “reasonable” prices, terms, and conditions. CCTA argues that the Commission should not determine the “reasonableness” of a middle-mile provider’s proposed rates for access to its middle-mile facilities because the Commission cannot set rates for internet service.³ As written, however, the PD would not allow the Commission to actually set any rates or force any challenger to offer access to middle-mile infrastructure at any particular rate if it does not want to. That being said, AT&T agrees with the general principle that the Commission should not be involved in overseeing middle-mile rates, and reiterates that if a CASF applicant and middle-mile provider cannot agree on access rates, terms, and conditions through arm’s-length negotiation, that alone is evidence that the middle-mile provider’s proposed rates, terms, and

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); 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))

² CCBC Comments on PD at 4 (Nov. 29, 2018); *see also* Race Comments on PD at 3-4 (Nov. 29, 2018).

³ CCTA Comments on PD at 5-7 (Nov. 29, 2018).

conditions are not commercially acceptable for the project at issue, and that building middle-mile infrastructure is “indispensable” to the project.

3. Affordable Low-Income Offering. The PD (at 62) would require all applications to include an “affordable” internet service plan for low-income customers. The Small LECs and Frontier oppose this proposal,⁴ and AT&T agrees that the proposal should be removed. As AT&T argued previously, AB 1665 does not require such a service plan. Moreover, a requirement to include a special internet offering for low-income consumers is aimed at increasing *adoption*, whereas the CASF infrastructure fund is aimed at the different goal of increasing internet *availability*.⁵ There are already programs, such as the CASF Broadband Adoption Account, aimed at increasing internet adoption through low-priced offerings. AT&T supports such programs, but the Commission’s implementation of an *infrastructure* fund must be tied to the Legislature’s actual purpose for *that* fund, not to the general goals of other programs. Accordingly, the CASF Broadband *Infrastructure* Grant Account should not include requirements aimed purely at internet adoption.

4. Data Cap. The PD (at 60) would require applicants to offer an internet service plan with a data cap of 190 GB. TURN/Greenlining argue for a data cap of 250 GB to account for future broadband usage increases.⁶ Even a 190 GB data cap, however, would be inconsistent with data caps under CAF,⁷ and a higher mandatory cap would create an even larger gap with CAF, requiring CAF participants to develop separate offers specific to California and thereby undercutting efficiencies that could otherwise result if their CAF offers already satisfy CASF requirements. No data cap should depart from CAF, and certainly not a 250 GB cap.

⁴ Small LEC Comments on PD at 6 (Nov. 29, 2018); Frontier Comments on PD at 3 (Nov. 29, 2018).

⁵ See Pub. Util. Code §§281(a), (b)(1)(a).

⁶ TURN/Greenlining Comments on PD at 12-13 (Nov. 29, 2018).

⁷ See AT&T Phase II Reply Comments at 10 (May 1, 2018).

5. CAF Reporting. Race and CETF argue that the CAF reporting requirements in Section 5.1 of Appendix 1 to the PD should be made mandatory.⁸ AT&T disagrees, because the PD was correct in making such reports optional. As noted in AT&T's Opening Comments on the PD (at 3-4), a mandatory California-specific reporting requirement would conflict with the FCC's detailed CAF reporting requirements and impose significant additional reporting burdens and costs on CAF providers, which already face significant burdens under the FCC's rules. In fact, requiring separate California reports in January of each year, when CAF providers report to the FCC's USF administrator (USAC) in March, would be a recipe for having inconsistent, out-of-sync data at the state and federal level. Among other things, every CAF provider would have to reserve its right to update and revise its California reports on March 1 of each year after it files its CAF report with USAC.

In addition, AB 1665 does not authorize any such mandatory reporting requirement for CAF providers. Rather, Public Utilities Code §281(f)(5)(C)(i) draws a bright line, contemplating *only* that CAF providers have the *option* to inform the Commission, prior to July 1, 2020, of census blocks where they have completed their CAF deployment. After July 1, 2020 there would be no point in any such reporting because, under Section 281(f)(5)(C)(i), all census blocks will be eligible for CASF funding regardless of whether they are located in a CAF area. Furthermore, nothing in that provision authorizes any requirement to make CAF providers report on their tentative and highly confidential *plans* for deployment at any time. Thus, rather than impose unnecessary (and unlawful) mandatory reporting burdens and pave the way for confusion and inconsistency, the PD correctly gives CAF providers the option to submit California-specific reports. That provision in Section 5.1 of Appendix 1 should not be changed.

6. Provider Deployment Data. The PD (at 11) states that AT&T's Form 477 data included inaccurate data due to "miscoding." The CCB Consortium, which pejoratively characterizes the limited data at issue as "false," asks the Commission to remove the term

⁸ Race Comments on PD at 3-4; CETF Comments on PD at 6 (Nov. 29, 2018).

“miscoding” because the CCB Consortium had not used that term.⁹ But the term “miscoding” is accurate. In AT&T’s Form 477 data filed as of December 31, 2016, AT&T had miscoded the speeds of the fiber facilities identified. This occurred in a small percentage of the census blocks reported for California (< 1%). The data were subsequently corrected. While AT&T always strives for complete and accurate reports, if discrepancies are discovered in Form 477 data AT&T works with the FCC to address the issue and improve reporting going forward, as do all parties.

7. 100% Funding. The PD (at 22) would limit the paths to 100% funding of a CASF application to those involving low-income households or area with no internet or only dial-up service. Frontier argues that the Commission should allow for multiple paths to 100% funding based on different characteristics of projects.¹⁰ AT&T agrees the PD should be changed to allow for multiple paths to 100% funding, which could create greater incentives for providers to participate in the program in areas that are likely uneconomic to serve.

8. Internet Speeds. The PD (at 60) requires at CASF applications to offer at least 10/1 internet service. CETF argues that when there are overlapping applications for an area, the application proposing speeds faster than 10/1 should be given preference.¹¹ AT&T disagrees. As AT&T has stated previously, many factors can affect the benefits an application, and any application promising 10/1 or faster service is eligible for funding under Public Utilities Code §281. Speed alone, therefore, should not be dispositive between competing applications, and rewarding higher speeds in this way could create incentives to always offer higher speeds, which could result in fewer locations being served. If anything, the projected cost per household should be given top priority as between overlapping applications.

⁹ CCBC Comments on PD at 3; *see also* Race Comments on PD at 1-2.

¹⁰ Frontier Comments on PD at 2-3.

¹¹ CETF Comments on PD at 7.

9. Right of First Refusal. Race and CETF argue that the PD should be changed to add fines or penalties if the existing facilities-based provider asserts its right of first refusal (“ROFR”) but does not fully build out the designated area, and that an existing provider should not be allowed more than one extension of time to build.¹² Those proposals are inconsistent with the letter and spirit of AB 1665 and should not be adopted. Under Public Utilities Code §281(f)(4)(A)(iii), the *only* permissible “penalty” for a provider that does not complete its build-out after asserting its ROFR is that the area is opened to CASF applications by others. Moreover, that provision *requires* the opportunity for multiple extensions, stating that, as long as the existing facilities-based provider that asserted its ROFR shows that it “is making progress towards the completion of the deployment,” the Commission “shall extend the time to complete the project beyond 180 days.” Thus, Race’s and CETF’s proposal should not be adopted.

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/s/

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¹² Race Comments on PD at 3; CETF Comments on PD at 5.