BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Consider Modifications to the California Advanced Services Fund.	Rulemaking No. 12-10-012

COMMENTS OF THE CENTRAL COAST BROADBAND CONSORTIUM IN RESPONSE TO ADMINISTRATIVE LAW JUDGE'S RULING, DATED 5 SEPTEMBER 2018, REQUESTING COMMENTS ON THE ELIGIBILITY FOR AND PRIORITIZATION OF BROADBAND INFRASTRUCTURE FUNDS FROM THE CALIFORNIA ADVANCED SERVICES FUND

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Summary

Per California Public Utilities Commission (CPUC) Resolution T-17529, the Central Coast Broadband Consortium (CCBC) is the California Advanced Services Fund (CASF) consortia grant recipient representing Monterey, San Benito and Santa Cruz Counties. The CCBC is a party to Rulemaking 12-10-012 and respectfully submits these comments in response to the Administrative Law Judge's Ruling Requesting Comments on the Eligibility for and Prioritization of Broadband Infrastructure Funds from the California Advanced Services Fund, dated 5 September 2018.

Also, the CCBC submitted comments in this proceeding on 8 August 2018 which might or might not be considered as part of the official record of this proceeding as of today's date. The 8 August 2018 comments are a necessary predicate to the additional comments we submit today. In abundance of caution and to insure inclusion in the official record, the 8 August 2018 comments are incorporated below.

I. How should the Commission determine whether a CASF project application should be eligible for 100 percent funding?

a. How should the CPUC implement the funding level for a CASF infrastructure application pursuant to Pub. Util. Code Sec. 281(f)(13)4?

1. How should the Commission define "location and accessibility" of an area, as required in statute?

The purpose of the CASF infrastructure account is to subsidise, to one extent or another, the construction of modern broadband infrastructure in areas of California which lack it. Although it is vague, the language in Assembly Bill 1665 can best be read as creating the presumption that some "locations" are deserving of greater levels of funding, and as specifically identifying "accessibility" as a criterion to be used in determining whether a location so qualifies. Since inaccessible areas have poorer broadband infrastructure and service, largely due to higher absolute and per housing unit costs, the logical conclusion is that inaccessible locations should receive greater funding than accessible ones.

Various criteria may be used to classify the accessibility of a location: lack of usable pole routes or conduit, unpaved roads, road beds that are constrained by terrain factors (such as waterways or rocky ground or steep slopes), and distance from public safety resources, schools, health care and commercial centers. The CCBC recommends classifying locations into three categories – accessible, remote and inaccessible – on the basis of how many or to what degree such criteria are present.

There are other criteria which may be used to identify locations which have a particularly high priority for funding, such as income levels and population density. These criteria are discussed in the comments in this proceeding originally submitted by the CCBC on 8 August 2018, which are included below.

2. How should the Commission define the "existence of communication facilities" that may be upgraded to deploy broadband?

3. How extensively should an applicant be required to use communication facilities in order to receive credit for doing so under the funding criteria?

As recommended in the CCBC's comments in this proceeding submitted on 16 April 2018, the primary determinant of funding levels should be the capability of the subsidised infrastructure. Projects which will deliver higher broadband speeds and service quality should receive higher levels of funding. Consequently, the use of existing communications facilities in a project should be evaluated on the basis of the resulting upgrade.

If it is a simple, incremental change in the capabilities of existing plant, such as adding DSL equipment to an analog only system, then funding should be at a lower-than-baseline level. Taxpayer money should not be prioritised for simple "upgrades in place". If it involves the replacement of one type of technology with a superior one, such as using existing conduit to replace copper lines with fiber optic lines, then an incrementally higher proportion of costs should be subsidised.

For example, if the cost of refurbishing existing conduit for fiber plant is $10 per foot, and the cost of installing new conduit is $30 per foot, and the baseline CASF reimbursement is 60%, then the use of existing conduit saves taxpayers $12 per foot. In that case, it would be prudent to provide an applicant with an incentive to pursue the lower cost route by splitting the savings, perhaps by reimbursing the full $10 per foot.

Taking this approach leads to a simple definition: existing communications facilities are facilities that 1. are proposed for use in a project, 2. result in the installation of new and superior technology, and 3. provide a measurable and documentable reduction in project cost.

4. What factor(s) would justify that a project makes a "significant contribution" to achieving the program goal? For example, if the application proposed to serve more than 300 households, would that be a "significant contribution?"

As defined in the Legislative Counsel's Digest of AB 1665, the goal of the program is changed to subsidising "infrastructure projects that will provide broadband access to no less than 98% of California households in each consortia region". Determining whether a project makes a significant contribution toward achieving this goal is straightforward: a project proposed in a region that has less than 98% household access makes a greater contribution than one in a region with 98% or better access. No additional criteria are necessary and, to keep the funding process as efficient as possible, should not be employed.

b. Should additional factors be included in this funding determination?

1. For example, should the Commission provide additional funding for applications that serve low-income communities?

2. Should other criteria previously raised in comments be included, such as unconnected public safety infrastructure? Please provide specific recommendations about objective and reasonable methods by which the CASF should implement these criteria.

Additional criteria that demonstrate higher social and economic benefits, such as service to low income communities, are good measures of a project's worth to taxpayers and should be considered in developing criteria for prioritising areas. Those areas should receive greater funding levels. A parallel process, applied to individual applications, would be burdensome to applicants, stakeholders and staff, and should not be employed.

The CCBC has provided detailed methodology recommendations regarding area prioritisation in previous submission, and we stand by those.

c. What are the appropriate values, expressed as points or percentages, for each potential factor in the CASF eligibility criteria?

1. Is it necessary for those percentages to add up to 100 provided there is a maximum funding level of 100 percent?

2. Should there be the multiple paths to 100 percent funding? If so, what/how?

As previously stated, the CCBC believes service and technology levels should be the primary determinant of funding levels, and 100% funding levels may be justified on that basis alone. Use of other factors to increase funding levels should be sharply limited, to a

maximum 20% increment. Otherwise, the result would be incentivising poorer service and infrastructure in the most disadvantaged communities. The capital investment criteria used by incumbent providers already prioritises high technology, e.g. fiber, in high income communities and poor technology, e.g. low capacity "wireless local loop", in poor communities. It is the mission of the CASF program to counteract, and not reinforce, that proclivity.

II. Should the Commission require CASF grantees to offer affordable broadband service plans as a condition of receiving CASF funding?

a. Should the CASF Program require CASF grantees to offer affordable broadband service plan(s) to receive CASF funding? If so describe the justification. For example, a provider offering a national, affordable low-income plan would meet this requirement so long as the plan is available to customers in the CASF grant area.

b. Should the Commission incentivize applicants to provide affordable plans though the funding determination required in Pub. Util. Code Sec. 281(f)(13)?

c. What is an affordable monthly price? What other factors should the Commission consider?

No.

Every project and every project area has, in aggregate, unique economic, financial and business circumstances. While it might be appropriate in some circumstances to, say, offer service to qualifying households at a rate that is below cost, it might not in others. Applicants should be encouraged to offer such programs when practicable, and commissioners should have information about such programs available when

considering the worthiness of a grant resolution, but it should not be a mandatory requirement, nor an additional, complicating factor in developing and evaluating applications.

d. How should applications in low-income areas be eligible for 100% funding? For example, should the "Maximum Funding Level: 100%" table below be modified.

Low income areas should be given greater consideration when identifying high priority areas and, in the process, providing applicants with a high degree of confidence that projects proposed for those areas will automatically be eligible for funding. Reducing delays and uncertainty in the application process will do more to incentivise independent projects than complicated funding level determinations.

The CCBC has developed and assisted in the development of CASF-funded projects since 2009. It is an increasingly difficult challenge to recruit qualified infrastructure grant applicants. The delays, uncertainty and litigation involved in the review and approval process are the primary reasons qualified companies refuse to participate. Subsidy levels can be a consideration too, but other funds can often be identified to backfill project budgets when CASF eligibility is assured and schedules are short.

Money can be made. Time cannot.

The more complicated the process is and the more opportunities for incumbents to game the system, either by exploiting an overly intricate scoring system or by endless litigation of independent proposals, the less the likelihood is of meaningful service and infrastructure upgrades in deserving communities.

As previously stated, funding increments over and above the level justified by the service and technology levels offered by a project should be limited to 20%. The fact that a community has been previously prioritised by the commission, on the basis of income and other factors, may be sufficient to justify the maximum increment, but even if other incremental funding criteria are met, the total increment should be no more than 20%.

III. Should the Commission eliminate the current scoring criteria and replace it with a different evaluation process focused on eligibility, minimum performance standards and funding level determinations?

a. Should the Commission eliminate the Scoring Criteria used in the program and included in the Staff Proposal and replace it with minimum performance requirements. These requirements would include:

• A commitment to serve all households in the proposed project area;

• Speeds of at least 10 mbps downstream and 1 mbps upstream;

• Latency of 100 ms or less;

• If the project receives a categorical exemption under CEQA, it would be completed in 12 months or less and projects requiring additional CEQA/NEPA review must be completed within two years of the approval of those reviews;

• Data caps, where used, exceed 190 GBs per month; and

• The applicant offers an affordably priced plan (See Question 2).

All these criteria are worthy of consideration, particularly when grant resolutions are considered by the commission. The experience of the program throughout its life shows that a scoring system is unnecessary: it is rare for two infrastructure grant applications to be submitted for the same geographic area at the same time, and the shortage of willing applicants is a far greater problem than a shortage of available funds. The CCBC recommends a simplified set of review criteria:

1. Do the project specifications (i.e. proposed service levels) and the characteristics of the area (i.e. existing service levels) meet the requirements contained in statute? Areas can be prioritised by upfront eligibility determinations.
2. Is the applicant qualified?
3. What is the baseline subsidy level, given the level of service and technology proposed?
4. Are there factors which justify increasing the subsidy level by no more than 20%, to a maximum of 100%?
5. Given the characteristics of the area and the project, is the subsidy amount reasonable?

b. Staff proposes to revise its previous Ministerial Review proposal so that the process for reviewing applications, including funding level determinations, is done in the manner outlined in the table below.

A ministerial review process is an excellent proposal. Anything that reduces delays and uncertainty is a positive step forward for the program. However, to be effective, such ministerial review criteria must be coupled with determined and unbiased execution.

IV. Should the Commission limit a CASF grantee's Administrative Expenses to 15 percent of total project costs?

a. The Commission limits the reimbursements of service providers' claimed administrative expenses funded by California's universal service fund programs, including the High-Cost Fund Program and the California LifeLine Program. Should the CASF Program also limit the reimbursement of administrative expenses claimed by CASF grantees?

1. How should the CASF Program define an administrative expense?

2. Should the reimbursement of administrative expenses claimed by CASF grantees be limited to 15% of the CASF-funded project?

A limit on administrative costs is an excellent idea and 15% is reasonable. The CASF-subsidised portion should be the same percentage of total costs as any other project element.

Administrative expenses should be defined as indirect overhead costs attributable to a project, per generally accepted accounting principles (GAAP), and the direct cost of complying with CPUC administrative and regulatory requirements related to the grant itself (as opposed to regulatory requirements generally applicable to an activity, subsidised or not – those would be reckoned as overhead).

However, such a limit is only reasonable if the CPUC restricts grant administration requirements to the minimum necessary to ensure proper use of taxpayer funds.

V. How should the Commission treat CAF providers seeking CASF funds? How should the Commission treat satellite broadband service?

a. Pub. Util. Code Sec. 281(f)(13) and 281 (f)(5)(C)(i) prohibits spending and CASF funding in census block with Connect America Fund accepted locations, except, as noted in 281 (f)(5) (C) (ii), when the provider receiving Connect America Fund support applies to build beyond its CAF accepted locations. How should the Commission require applicants submitting applications under these circumstances separate CASF and CAF financing?

Providers receiving funding from CAF for a particular census block should be required to identify which locations are being funded and, applying GAAP criteria to data and methodology that have been validated by an independent auditor, show how much of its total CAF subsidy should be allocated to construction costs. The maximum per household CASF subsidy for the remaining locations should be no more than the per household CAF construction subsidy thus arrived at, although a lower amount may be justified by other CASF criteria.

1. For example, if a census block in an application contains ten households and three CAF accepted locations, should the Commission assume the CAF locations are households, and only fund the seven remaining households?

Yes, unless the applicant assumes the burden of proof and proves otherwise to the Commission's satisfaction.

b. How should the Commission treat satellite providers receiving CAF support?

1. Is a satellite provider an "existing facility-based provider," as that term is used in Pub. Util. Code Sec. 281 (f)(5)(C)(ii)? (Note this is particularly important because the FCC recently awarded CAF funding to a satellite provider.)

Yes, a satellite provider is facility-based, according to the National Telecommunications and Information Administration's definition, which was adopted by the CPUC in Resolution T-17443 ("it provisions/equips a broadband wireless channel to the end user location over licensed or unlicensed spectrum[1]") and by the definition used by the FCC ("obtains the right to use dark fiber or satellite transponder capacity as part of its own network"[2]).

2. If a satellite provider is an existing facility-based provider, should the Commission revise CASF rules to include satellite service in the definition of a served area? (Note that currently, an area served by satellite is considered served only if that service was provided through a CASF grant.)

The Commission should maintain the current CASF rules which ignore satellite Internet service when determining whether an area is eligible for subsidies (except when

[1] https://www.broadbandmap.gov/nbm/classroom, retrieved 20 September 2018.

[2] https://transition.fcc.gov/form477/477glossary.pdf, retrieved 20 September 2018.

such service is CASF-funded itself). The purpose of the infrastructure program is to fund the construction of broadband infrastructure in order to increase the availability and accessibility of broadband service.

Satellite Internet service is ubiquitous. If it were a sufficient method of delivering broadband service, then there would be no need for the CASF program: virtually 100% of Californians would be reachable. In that context, the California Legislature's declaration that sufficient broadband is not yet available to at least 98% of Californian households, and its repeated decisions to establish and fund CASF, can only be interpreted as excluding satellite broadband service availability as a disqualifying criterion.

Satellite Internet service's acceptance by the FCC's Connect America Fund program is not relevant to this determination. CAF subsidises service, while CASF subsidises infrastructure. The two programs may serve similar ends, but the philosophy and methodology behind them are completely different.

Satellite Internet service is also expensive and technically inferior (particularly in regards to latency measurements). The Commission has properly excluded it from CASF eligibility considerations, except in the unusual and yet to be encountered circumstance where it might deem subsidising it to be a necessity.

There is no need and no justification to change CASF eligibility criteria in this regard.

It is necessary, however, to not disenfranchise areas where the CAF program is subsidising satellite or other substandard service from CASF eligibility. The CAF-based

eligibility exclusion expires on 1 July 2020, approximately 18 months after the anticipated effective date of the contemplated CASF program revision. If, on that date, Internet service that meets the minimum standard as defined by the Commission is not available in an area, then it should be eligible for CASF infrastructure subsidies, even if the FCC is fecklessly expending federal funds there.

To ensure that such areas are not unjustly disadvantaged, the Commission should, prior to 1 July 2020, accept applications for CASF-subsidised projects in areas where a provider is receiving CAF funds. Such applications should be swiftly reviewed without prejudice (as all applications should) and, if otherwise deemed acceptable, approved by the Commission on a provisional basis.

Any applicant that makes use of this provisional process would bear the risk associated with it. If, on 1 July 2020, sufficient service is available and the project area is not eligible for a CASF subsidy, then the provisional decision expires and no grant is awarded. On the other hand, if sufficient service is not available on that date, then the grant is awarded and the project may proceed. In the case of a CAF-subsidised terrestrial provider, it would be difficult, but not necessarily impossible, for an applicant to be confident that his or her time and money wouldn't be wasted. But in the case of a CAF-subsidised satellite provider, it would be a certainty under current CASF eligibility rules.

The enforced waiting period would not necessarily be fatal for an applicant. Given 1. the time involved in developing a project and preparing a CASF grant application, 2. the review period, and 3. the likely requirement to obtain CEQA approval, the additional

delay might be bearable. In any event, it would be less of a burden than waiting a year and a half just to begin the process.

VI. Should the Commission require additional information in project summaries?

In addition to current requirements, Staff proposes that the Commission require applicants to include the following items in Application Item 1 – Project Summary:

• Identify main major infrastructure: miles of planned fiber, Central Offices used, number of remote terminals/fiber huts/wireless towers to be built, and if an IRU is used;

• Identify major equipment expenses (e.g., number of DSLAMs, multiplexers, etc.);

• Estimated breakdown of aerial and underground installation and if the poles or conduits are already in place; and

• Estimated construction timeline.

In general, applicants are already required to provide information such as this elsewhere in the application. If the intent of this proposal is to require greater detail from applicants in regards to certain items, then it might serve a useful purpose. The level of detail an applicant provides can be useful indicator of competence, and might otherwise help expedite Staff's review.

However, if the purpose of this proposal is to require applicants to publish construction details that could be used by opponents, particularly incumbent providers, to block a project by nefarious means, then it is a bad idea. For example, identifying a particular central office, pole or fiber route could allow an incumbent to preempt its

availability. At the extreme, it could provide a basis for frivolous litigation of proposals by incumbents.

Requiring this kind of information might speed project evaluation and approval, but publishing it prematurely would work to prevent achievement of the program's goals.

Additional CCBC Comments

VII. Eligibility and Challenge Process

Should a census block only be CASF-eligible if the subscription rate within that census block is less than 51% of all households?

Yes.

Ongoing research conducted by the California Emerging Technology Fund[3] shows that the average penetration rate for fixed Internet access service in California is 69%. If the penetration rate in a census block is 50% or less, then it can be reasonably concluded that service is deficient and, regardless of what marketing or other claims incumbent service providers might make, the census block is unserved.

The burden of proof to show this requirement has been met should not fall on CASF project applicants, but rather upon challengers. Absent a challenge, the census block in question should be deemed eligible. An incumbent ISP that wishes to challenge the eligibility of an area for a CASF infrastructure grant should be required to provide

[3] Broadband Internet Connectivity and the "Digital Divide" in California – 2017, Berkeley IGS Poll, Institute of Governmental Studies University of California, Berkeley, June 27, 2017.

verifiable data that proves that the fixed Internet service penetration rate in any challenged census block is 51% or greater. Otherwise, the challenge should be rejected.

Mobile subscriptions should not be counted in making this determination, however. Mobile service is an individual service and not a household service. Consequently, mobile service cannot be reckoned as serving a "household" as required by the California Public Utilities Code[4].

What should the CASF challenge process look like? Which trigger(s) should be used to start the challenge process for a CASF application? Which trigger(s) should be used to end the challenge process for a CASF application?

The current system for triggering a challenge process is completely adequate. Notice of CASF infrastructure grant applications is widely distributed and otherwise available. The trigger for closing the challenge process should be the passing of 21 calendar days from the opening of the process. No challenges should be accepted after that time.

Should the Commission create a single definitive list of CASF-eligible census blocks and a pre-application eligibility-map challenge process, as AT&T proposes?

No.

Large incumbent Internet service providers, including but not limited to AT&T, employ full time lobbyists and lawyers whose sole purpose is to protect corporate interests, regardless of the harm done to the public interest. They will engage

[4] California Public Utilities Code, Section 281.

aggressively and defensively in any statewide eligibility determination process. On the other hand, local governments, schools, community based organizations and economic development agencies do not have the resources to fight such battles on a prospective basis. Creating a process that can be easily gamed by incumbents and that effectively locks out meaningful participation by all Californian communities will defeat the purpose of the CASF program.

What should the challenger have to prove (household subscription rate and broadband service speed) during the challenge process? What information should be required of the challengers to an application, other than what is currently proposed in the Staff Proposal? What information should be required of challengers to determine eligibility as indicated on the California Interactive Broadband Availability Map?

The California Public Utilities Code[5] states that CASF infrastructure grants shall go to providers who propose to provide service "to unserved households in census blocks where no provider offers access at speeds of at least 6 mbps downstream and one mbps upstream". In order for such an offer to be valid, an incumbent provider must be capable of actually delivering service at 6 Mbps download and 1 Mbps upload speeds (hereinafter, "6/1 service") consistently to any household that subscribes to it. Although it is common industry practice to advertise service at a certain level and then condition it with a long and difficult to parse list of exceptions, there are no such exceptions in the statute. An incumbent is either capable of delivering 6/1 service to every household that

[5] California Public Utilities Code, Section 281.

subscribes to at least that level of service at all times, or it is not. If an incumbent is not capable of fulfilling an offer of 6/1 service, or better, at all times in any given census block or to any given household, then that census block or household is unserved.

In the past, incumbents have used spurious challenges to delay CASF grant applications, in some cases beyond the point where a project is viable. This kind of gamesmanship has been cost-free to challengers, who have every incentive to make unsupported claims, but face no liability when those claims are rejected. Challengers should be required to provide verifiable data under penalty of perjury and bear the cost of verification.

Consequently, whether it is in regards to a specific grant application or a general determination of eligibility such found on the California Interactive Broadband Availability Map, any challenger who disputes the eligibility of a census block on the basis of its own existing service should provide for that census block:

- The total number of households subscribing to its Internet access service.
- The total number of households to which it can deliver 6/1 service, or better, 100% of the time.
- If appropriate, the date by which any federally funded service or infrastructure upgrades will be completed.
- An affidavit signed under penalty of perjury affirming that such information is true.
- A bond or other financial instruments of sufficient value to cover the cost of positively verifying such information.

Such declarations must be offered as absolute, with no allowance for variance for any reason except a declaration of a state of emergency by local or state officials.

Could such a pre-application eligibility map challenge partially or entirely replace the post-application challenge?

As explained above, no.

Is the 21-day Staff proposed challenge window timeline and challenge criteria also sufficient for the eligibility-map challenge process?

A 21-day window is sufficient for any incumbent to respond to any characterization of its own service, for any purpose. However, a longer period of time is required by applicants or third parties who wish to challenge eligibility determinations based on false claims submitted by incumbents. If an applicant or third party wishes to challenge a specific claim of 6/1 service or better made by an incumbent, then it should be allowed 45 days to respond, following the receipt of proper notice of such a claim.

Should the challenges vary by technology? (e.g., should the burden of proof for a fixed wireless Internet service provider submitting a challenge be different than that of a wireline provider?) Why or why not?

The burden of proof for a challenge must be technology-neutral. It might be easier for a wireline provider to determine its service levels and availability, and cheaper for CPUC Staff to verify such determinations, but this state of affairs is mere happenstance. Wireless providers should be held equally accountable for service claims and be subject to the same financial, civil and criminal liability as wireline providers.

VIII. Prioritizing Projects and Areas to Support

Which census blocks, census tracts or communities should be prioritized by the Commission? Two examples of previous approaches to prioritization include: Resolution T-17443 (approved by Commission 6/26/14) and the High Impact Analysis developed by Staff and included in the Supporting Materials for the May 25, 2017 CD Staff Workshop on CASF Reform. Should the Commission use methods similar to this going forward?

Yes. The CCBC strongly endorses a rigorous, quantitative approach to setting broadband development priorities. The CCBC used such an approach in developing its priority list for the purposes of Resolution T-17443, as did Staff in developing the High Impact Analysis.

In the case of the CCBC's priority determination, a total of 12 communities were identified as high priorities on the basis of social and economic development impact. This determination informed the CCBC's efforts and, via a middle mile CASF grant, participation as parties in the Charter/Time Warner proceeding (CPUC Decision 15-05007) and private investment, our members have succeeded in bringing modern Internet access service to at least seven of those communities, and the tens of thousands of people who reside therein.

This approach should be continued.

How should the Commission treat these areas identified as priorities? i. Should these priority areas be eligible for expedited review? ii. Should these priority areas receive higher funding levels or percentages, perhaps under the argument that they contribute significantly to the program goal, one of the rationale for additional funding in statute?

The current 105-day deadline for the Commission to either approve a CASF infrastructure grant application or reject it is sufficient for any purpose. Rather than complicate the review and approval process by expediting some applications at the expense of others, the Commission should meet this current but long ignored standard. If a CASF infrastructure grant application has not been acted upon by the Commission within 105 days (with di minimis extensions allowed to account for variable voting meeting schedules), then it should be deemed granted.

As explained in our earlier comments[6], the CCBC believes funding levels should be predominantly determined by the service levels proposed. That said, it is appropriate to grant an extra level of funding for high priority areas, but not to the degree that incentives for deploying modern Internet infrastructure are removed.

IX. Providing Access to Broadband Service to Areas Adjacent to CAF II Areas

How can the Commission incentivize CAF II providers to build beyond their commitments to the Federal Communications Commission? In order to incentivize CAF II providers to deploy throughout the community and in areas adjacent to CAF II areas, should the Commission: a.

[6] 4 Comments of the Central Coast Broadband Consortium on Phase II Staff Proposal, 16 April 2018.

Provide an expedited review process to approve supplemental grants to expand CAF II-related projects?

As noted above, expedited review processes are not necessary. Simply adhering to the reasonable, existing deadline is sufficient.

b. Should there be a separate process or set-aside of funding for these supplemental builds?

A separate process or set aside should not be necessary. CAF II providers can easily standardize and submit supplemental grant applications on their own using the established process. Since the census blocks and locations where they will build is known to them, there is no reason for them not to submit supplemental applications quickly, thus eliminating the need to set money aside.

It would be appropriate, however, to set a deadline of 180 days from the adoption of a Phase II resolution, or other infrastructure program implementing action, for submission of supplemental grant applications. Delays might advance the corporate goals of the incumbent telephone companies that have received CAF II funding, but not the public interest.

c. Should supplemental grants be tied to the release of CAF II plans? Should areas where CAF II providers do not commit to build out be reclassified as eligible?

Yes.

Build out plans made pursuant to the acceptance of public money should be treated as being in the public domain. Since CAF II and CASF money is awarded for the purpose of bringing service to unserved areas, there is no possibility of making a legitimate confidentiality claim on the basis of competitive disadvantage. The CPUC should require CAF II recipients to disclose all of their publicly subsidized build out plans under penalty of perjury, and should publish that information.

Consequently, if a CAF II recipient states that a given area or location won't be served pursuant to such funding, then that area or location should be reclassified provided other eligibility standards are met. Such a reclassification should be also be publicized, so the people and communities in question can appropriately respond.

d. How should the interests of the CAF II providers to choose which CAF II areas they build out to with federal funding while also requiring them to complete other projects in the state) be balanced with competitor interest in bidding to build out in those same communities?

To the extent CAF II providers have discretion regarding where they build out, they are entitled to make that choice. However, if they also desire subsidies from Californian ratepayers, they must accept that those ratepayers have equally legitimate interests in planning, developing and deploying modern broadband infrastructure in their communities.

CAF II providers have, in effect, a right of first refusal for the areas where they are receiving federal subsidies. If they do not exercise that right in a timely fashion, they

should bear the full consequences of any ensuing competition. Mothballing entire communities, or gaming the system in order to maximize access to Californian funds as Frontier Communications did in its Desert Shores CASF project area (as described in CPUC Resolution T-17614), is pernicious and should not be allowed.

X. Reimbursement Process

Should the CASF reimbursement process change?

No.

The current reimbursement process has proven effective in safeguarding public funds. CASF infrastructure grant recipients should be held accountable for expenditures made from the public purse. The current process helps to ensure that projects are completed as proposed. Changing the standard for release of funds from a strict reimbursement basis to, in effect, a monthly stipend would only encourage waste and delay. A monthly stipend would disproportionately benefit large incumbents, such as AT&T, who employ full time lobbyists and lawyers who can devote their days to gaming the system through endless litigation of disingenuous claims of unavoidable delays or changed circumstances.

XI. Middle-Mile Infrastructure

How should the Commission verify that a middle-mile build included in a proposed project is "indispensable" to that project, as required by statute? Should Commission Staff rely on the

middle-mile location information providers submitted as ordered in D.16-12-025?If middle-mile infrastructure already exists near the proposed project area, under what circumstances may an applicant build its own middle-mile infrastructure?

Yes, Staff should rely solely on the information provided pursuant to D.16-12-025.

If no provider has submitted information that conclusively demonstrates that they 1. have middle mile facilities in a proposed project area and, 2. those facilities – including but not limited to dark fiber – are available on an unbundled and open access basis at a fair market price, then any middle mile component of a proposed project should be deemed "indispensable".

It is reasonable to allow existing middle mile providers to submit challenges as described in Section I above. However, if such a challenger provides information that should have been disclosed pursuant to D.16-12-025 but wasn't, then the challenger should be subject to the maximum daily fine applicable under CPUC rules for each day it was delinquent in fulfilling its obligations. Submission of such information in a challenge process should be considered prima facie evidence of non-compliance.

The conditions of any middle mile funding should include a requirement that the grantee make the subsized infrastructure and any co-terminous fiber that it owns, including but not limited to dark fiber, (e.g. long haul connections to major exchanges) available on an open access, unbundled basis at a specified price for at least five years, consistent with past CPUC precedent[7].

[7] CPUC Resolution T-17429

If middle-mile infrastructure already exists near the proposed project area, should there be a limit on how much infrastructure may be built?

Given that CASF-funded infrastructure projects are largely in rural, and often remote, areas, an arbitrary mileage limit would not be appropriate. Instead, subsidized middle mile infrastructure should be limited to the economically feasible minimum distance between the connection point(s) to the associated last mile infrastructure and the nearest point of presence where dark fiber and other unbundled middle mile services are available on an open access basis at a fair market price.

For purposes of grant funding, is leasing or purchasing middle-mile facilities for terms beyond five years (e.g., IRU for 20 years) allowable or even preferred over building new infrastructure?

Great care should be taken in allowing funding for leased middle mile facilities. Funding should not be allowed for lease/purchase of fiber from grantees or affiliated entities, regardless of how loose the affiliation might be.

There are circumstances where long term IRUs or similar arrangements should be subsidized. These circumstances include instances where dark fiber or other unbundled middle mile facilities are available on an open access, fair market basis, in quantities sufficient to serve multiple, independent users in addition to the applicant. Otherwise, the commission should fund the construction of new middle mile facilities. Any services, e.g. lit transport, that can be technically supported by the subsidized leased fiber should

be made available on an open access, unbundled basis at a specified price or on a fair market basis, as appropriate.

No middle mile operator, incumbent or CASF-subsidized, should be allowed to extract rents from the CASF program or from facilities funded by it.

Alternatively, is a challenge to the project application sufficient to prove it is not indispensable, or a lack of a challenge sufficient to prove that it is?

The mere fact that an incumbent or third party challenges an application is not a sufficient basis for any finding whatsoever. Middle mile challenges should conform to the above recommendations.

Additionally, such challenges should include a binding offer of unbundled elements and services, including dark fiber and lit transport, that are available on an open access, fair market basis in sufficient quantities to support a reasonable number of third party users, in addition to the applicant. Otherwise, the challenge should be rejected on a peremptory basis.

The lack of a challenge should be taken as indicative, but it is not necessarily conclusive. Staff should verify that the applicant or any affiliate of the applicant does not own or lease middle mile infrastructure that it would otherwise be reasonably expected to extend, upgrade, repair or connect to in the normal course of business.

XII. Line Extension Items

What are the components of a wireline technology line extension connection that should be remunerated by the program?

The line extension program should reimburse the appropriate portion of the cost of:

1. Cables extending from the designated ISP's nearest point of presence to the nearest point in the public right of way where a service drop can be feasibly constructed to the eligible household, via the shortest feasible route. Deviations should be allowed if the ISP bears the full incremental cost.
2. A drop or other service connection to the eligible household by the shortest feasible route, regardless of distance from the public right of way, provided that property owners along such route agree to allow free and unencumbered access to and use of the route by the ISP, for any purpose whatsoever.
3. Intermediate electronic, optical or other equipment that is necessary to provision service at a level equal to the service offered by the ISP in adjacent areas. Such equipment, however, should not include customer premise equipment.

About how much on average do line extensions cost per foot? b. Is the $1,000 limit per aerial line extension and the $3,000 limit per underground drop proposed by Race Telecommunications Inc., sufficient to address properties far away from distribution facilities? Alternatively, should the Commission allow remuneration for line extensions costs incurred to serve properties several thousand feet away from distribution facilities? What should be the limit? Should there simply be

a maximum length of line extension, for example the 750 feet maximum proposed by North Bay North Coast Broadband Consortium?

As with middle mile infrastructure, given that CASF-funded projects are largely in rural, and often remote, areas, an arbitrary mileage or cost limit would not be appropriate. Instead, subsidized service drops should be limited as described above.

What are the components of a fixed-wireless line extension connection that should be remunerated by the program? And how much on average do fixed wireless extensions cost? Is the $300 limit per wireless extension connection proposed by Race Telecommunications Inc., sufficient?

The notion that fixed wireless equipment fits the common industry definition of a "line extension" is a product of the legislative sausage machine rather than a reflection of reality. The $300 limit proposed by Race Telecommunications Inc. is a reasonable amount to pay for a single access point capable of serving a single household any reasonable distance from an existing point of presence.

As with wireline extensions, any subsidized wireless extension should be capable of provisioning service at a level equal to the service offered by the ISP in adjacent areas and should not include customer premise equipment. We urge Staff to subject wireless line extension proposals made by wireline operators to particular scrutiny. The residents of eligible households should not be treated as second class citizens.

Should a service provider be able to apply for line extension connection cost remuneration on behalf of the property owner requesting such line extension service connection?

No.

ISPs should not be allowed to use the line extension program as an opportunity to launder CASF grant money through private citizens or to hold them captive. If an ISP wishes to apply for a grant to serve an eligible household, then the existing infrastructure grant process, as may be amended by the Commission, is sufficient.

A household that wishes to apply for a line extension grant should have the opportunity to compare offers made by multiple ISPs, and to submit an application on an arm's length basis. If a household requires assistance submitting a line extension grant application, then such assistance can be provided by a CASF-funded regional broadband consortium or CPUC Staff or other neutral third party.

It might be argued that placing the burden of assisting individual applicants on consortia or CPUC Staff will increase the cost of administering the program. Such an argument would be valid were the current complicated and indefensibly lengthy application process to be used for the line extension program. A simplified application form, backed by standardized declarations and other information provided by the designated ISP, and a streamlined review process will make such a burden negligible. The fear of self inflicted hardship does not justify processes that do not serve the best interests of the public.

Conclusion

The CCBC greatly appreciates the work that Commissioner Guzman Aceves, Administrative Law Judge Colbert and other CPUC Staff have put into this proceeding. We respectfully request that the above recommendations be incorporated into the anticipated Phase II decision and swiftly approved.

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Respectfully Submitted,

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