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

CALIFORNIA CABLE AND TELECOMMUNICATIONS ASSOCIATION COMMENTS ON ELIGIBILITY FOR AND PRIORITIZATION OF BROADBAND INFRASTRUCTURE FUNDS FROM THE CALIFORNIA ADVANCED SERVICES FUND

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Pursuant to the schedule set forth in the *Assigned Commissioner Ruling Setting Workshops and Seeking Comment on Eligibility For And Prioritization Of Broadband Infrastructure Funds From The California Advanced Services Fund* Scoping Memo and Ruling dated July 11, 2018 ("ACR") in the above-captioned Order Instituting Rulemaking ("OIR"), the California Cable and Telecommunications Association ("CCTA")[1] hereby submits these comments on certain topics set forth in the ACR, as well as topics discussed at the workshop hosted by Commissioner Guzman Aceves on July 25, 2018 ("7/25 Workshop").

I. SUMMARY

The California Public Utilities Commission ("Commission") must determine census block eligibility for broadband infrastructure grants based on the clear statutory requirements rather than on unlawful criteria that would lead to wasting funds on overbuilding existing broadband infrastructure. To avoid this undesirable outcome, it is critical for the Commission to retain the option for providers to file challenges even for projects that include prioritized census blocks so that the Commission avoids enabling overbuilding in areas that become served after

[1] CCTA is a trade association consisting of cable providers who have collectively invested more than $36 billion in California's broadband infrastructure since 1996 and whose systems pass approximately 96% of California's homes.

the priority list is created. It should also find that a middle-mile infrastructure is only deemed indispensable if no provider is able to offer the applicant middle-mile facilities necessary for the proposed project. Finally, the Commission should avoid setting arbitrary limitations on the line extension program at the front-end that would undercut the program. Instead, it should collect data regarding the efficacy and operations of the line extension process and implement limitations as the need arises.

II. ELIGIBILITY AND THE CHALLENGE PROCESS

A. The Commission must focus funding on census blocks where no service is offered, should fund line extensions for partially-served census blocks, and can hold workshops at a later point to address any remaining gaps.

The ACR proposes that a census block be considered served if a majority (at least 51%) of households within the census block ***subscribe*** to wireline or fixed wireless Internet service.[2] At the 7/25 Workshop, Commission staff suggested a variation, proposing that a census block would be considered served if 40% or more of the households in a given census block ***subscribe*** to broadband service. Both proposals focus on partially-served census blocks, even though many census blocks remain completely unserved. Moreover, both proposals violate the enabling statutory language, which provides that a project for a given census block ***cannot be funded*** if any provider in the census block ***offers*** broadband access at 6 megabits per second downstream and one megabit per second upstream ("6/1 Mbps").[3] Had the legislature wanted funding eligibility to be based on subscription rates, it would have said so, but it did not—with good reason. Households may choose not to subscribe to service for a variety of reasons, even if presented with the option to subscribe.

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[2] ACR at 4.

[3] The statute states: "Projects eligible for grant awards shall meet all of the following requirements: ... in census blocks where ***no provider offers*** access at speeds of at least 6 mbps downstream and one mbps upstream." Pub. Util. Code § 281(f)(5) (emphasis added).

Not only are the aforementioned proposals unlawful, but they would also necessarily lead to overbuilding of networks, which the legislature explicitly prohibited. AB 1665 states:

> It is the intent of the Legislature that California achieve the goal specified in paragraph (1) of subdivision (b) of Section 281 of the Public Utilities Code by fostering private investment ... and ***not use moneys in that fund to overbuild the broadband infrastructure***.[4]

Moreover, funding projects in census blocks where service is already offered directly contravenes funding preferences expressed in AB 1665 and would be unfair to Californians in other census blocks where no 6/1 Mbps broadband service is offered at all. It is on these truly unserved census blocks that the Commission should, as a matter of statutory requirement and public policy, focus its funding efforts. While there may be census blocks in which service is offered to some but not all households, unserved individuals in those blocks should be encouraged to apply for subsidies through the line extension program, as discussed below.

Finally, comments were made during the workshop about adoption goals. CCTA shares the Commission's goals in increasing adoption rates and notes that adoption programs were addressed in Phase I of this proceeding. At issue here, however, are funds for infrastructure projects and eligibility, which must be determined using the statutory standards described in this section.

B. CCTA generally supports the Staff's proposed challenge process, triggered by served notice of the CASF application.

The ACR seeks comment on the challenge process, including on AT&T's proposal to create a definitive list of eligible census blocks and a pre-application eligibility map. CCTA generally supports the challenge process set forth in Section 1.13 of the staff's proposal[5] for

[4] AB 1665, Section 2(c) (emphasis added).
[5] *See* Amended Scoping Memo and Ruling of Assigned Commissioner, Appendix C (issued February 14, 2018).

several reasons. Critically, the proposed challenge process ensures that no funds are used to overbuild existing broadband infrastructure, consistent with statutory requirements, by allowing service providers the time needed to identify any overlap between proposed and existing infrastructure, and by creating a clear process for the challenge. After all, the point of the CASF program is to carefully direct funding to areas where no service is currently offered.

With that said, there is no need to modify the challenge process to require challengers to submit subscription rates, households served, and speeds. While evidence of subscriptions can validate that a challenger does in fact offer service in a given census block, the Commission does not need subscription rates or data on all households served to make that determination. Further, as discussed above, subscription rates are irrelevant to the statutory requirement that ties eligibility to availability, not subscription. It is also unnecessary for challengers to submit speeds because those speeds should already be available through the broadband mapping process and publicly available marketing information from the service provider.[6] Moreover, subscription speeds are not an indicator of the maximum speeds offered in a particular area. Subscribers may choose not to upgrade to higher speed services for a variety of individual reasons. Accordingly, such information is not relevant to the determination of whether an area is served.

CCTA proposes that the 21-calendar-day challenge period should be triggered by notice of the application to the service list, not the filing date, because the filing date may not be known to potential challengers and other interested parties. CCTA sees no reason for the Commission to strictly prohibit late-filed challenges—where good cause can be shown (*e.g.*, lack of notice), a late-filed challenge may be reasonable. However, if the Commission is concerned about such

[6] CCTA further notes with concern that comments were made at the 7/25 Workshop suggesting that proof of subscription include provision of customer addresses and other customer-specific information. There is no need for this level of granularity to demonstrate that an area has service yet there is significant risk to consumer privacy and a high degree of competitive sensitivity. This suggestion should be summarily rejected.

delays, it could consider requiring that applicants notify service providers in census blocks adjacent to the proposed project area prior to filing the application. This step would put potential challengers on notice and avoid late-filed challenges.

CCTA does not object to AT&T's suggestion for a definitive list of eligible census blocks. However, the list must take into account the constantly evolving deployment plans of service providers—what may be "definitive" one day will not necessarily be "definitive" the next as service providers construct their networks. Any use of a definitive list must still, as set forth in AB 1665, permit: (i) service providers to exercise the right of first refusal in a census blocks set forth in the list, and (ii) challenges to a CASF application to account for changes within a census block.

III. PRIORITIZING PROJECTS AND AREAS TO SUPPORT

The ACR seeks comment on which census blocks, tracts, or communities should be prioritized. The ACR offers two examples of different types of prioritization, one from Resolution T-17443 and one from staff's High Impact Analysis. The ACR seeks comment on whether these priority areas should be eligible for expedited review or receive higher funding levels. CCTA does not object to the Commission highlighting specific areas of California where no service is offered, as long as the designated areas are truly unserved. However, for any Commission-designated priority areas, applications in these areas must still be vetted through the full application process. As CCTA stated in its prior comments, the expedited review process would be an unlawful delegation of authority and undermine due process by eliminating the time and stakeholder input needed to ensure vetted, sustainable, long-term solutions.[7] The opportunity to challenge an application is especially important because, while an area may be a priority at one point in time, that does not mean it will still be a priority at the time an application is filed—

[7] *See* CCTA Opening Comments at 9 (filed April 16, 2018).

indeed, at the 7/25 Workshop, parties discussed several instances in which areas designated as priority were later discovered to be served.

IV. MIDDLE-MILE INFRASTRUCTURE

The ACR asks how the Commission should verify that middle-mile infrastructure included in a proposed project is "indispensable" to that project, as required by statute. As an initial matter, the statute is clear that the Commission cannot fund middle-mile infrastructure unless "all or a significant portion of the project deploys last-mile infrastructure to provide service to unserved households."[8] Projects that only deploy middle-mile infrastructure are not eligible for grant funding. The legislature set forth this limitation on middle-mile infrastructure funding for good reasons—too much funding in the past has been directed to middle-mile projects with little or no last-mile benefit.

To the issue of indispensability, CCTA asserts that middle-mile facility availability is not a significant issue. Rather, many service providers seek below-market rates for middle-mile facilities, ignoring the significant costs for backhaul providers deploying middle-mile facilities in rural areas. Indispensability should not be confused with the inability to obtain below-market rates for middle-mile facilities.

Instead, new middle-mile infrastructure should be considered "indispensable" if the applicant demonstrates that no provider is able to offer the middle-mile facilities necessary for the proposed project. As a first step to verifying indispensability, the Commission should require the applicant to certify that it has contacted all known middle-mile providers in the area. Because applicants already make certifications in their applications, this additional certification would not be especially burdensome. This is a reasonable expectation and requirement for any entity seeking funding for middle-mile construction. Of course, if middle-mile facilities are

[8] Pub. Util. Code § 281(f)(5)(B).

already available, it would be wasteful to use limited public funds to construct additional middle-mile facilities.

To further ensure a proposed middle-mile build is indispensable, the Commission should permit challenges by middle-mile providers to show that they are able to offer middle-mile facilities for the proposed project. If the challenge demonstrated that middle-mile facilities are available, the challenge would prove that proposed additional middle-mile facilities are not indispensable. This backstop would be helpful in situations where there are middle-mile providers unknown to applicant or where middle-mile providers are offering capacity at market rates but the new entrant is seeking below-market rates. In sum, the new provider may be eligible for funding in the areas where the middle-mile facilities are truly indispensable but ineligible for funding in the areas of the project where middle-mile facilities are available but the entrant chooses not to utilize them.

Respectfully, this two-step process is superior to relying on the data gathered in response to the middle-mile data requests in D.16-12-025 for two reasons. First, the data responses to the middle-mile data requests can be stale—middle-mile facility routes may have changed in the time between data collection and the preparation of a given CASF application. Second, CCTA understands that much (perhaps all) of that data is submitted confidentially, and thus, the Commission risks disclosing highly confidential information if it were to share such data with an applicant.

Finally, the ACR seeks comment on whether leasing or purchasing middle-mile facilities for terms beyond five years should be allowable or even preferred over building new infrastructure. CCTA is unaware, from a statutory perspective, of how a lease term of more than five years would be a problem if the leasing party is able and willing to offer a longer term lease.

Such a lease would provide the middle-mile facilities necessary for a grantee to offer service, which is the point of the program. And funding projects where the grantee has a long-term middle-mile lease is most certainly preferable to funding new middle-mile infrastructure—funds that could be otherwise directed to last mile service.

V. LINE EXTENSION

The ACR seeks comment on possible options for limiting criteria for line extension grants. It is important to avoid imposing overly restrictive limiting criteria that run the risk of rendering the program inoperable before grants are even distributed. Line extensions are a low-cost way to ensure that more Californians can obtain broadband connections. Whereas infrastructure grants involve millions of dollars and can result in limited take-rates, line extensions cost thousands and there is a high probability that individuals will subscribe if they go to the trouble of seeking a line extension. Further, line extensions offer a great solution to fill gaps in census blocks that are only partially served, without costly new infrastructure projects. While the line extension program is funded at a relatively low-level ($5 million), 7/25 Workshop participants acknowledged that the program is essentially a pilot, and CCTA believes that it will prove to be a highly efficient mechanism to increase broadband connections, and worthy of future increases in funding by the legislature. For this reason, CCTA respectfully suggests that, rather than enforce restrictive criteria to render the program inoperable, the better strategy is to collect data regarding line extension reimbursement requests that are submitted and adopt any necessary limitations based on concrete data and real-world experience. With that said, below is analysis on several of the potential limiting criteria introduced by the ACR.

It is important to note that the statute contemplates three potential limiting factors for line extension: "limiting funding to households based on income..., limiting the amount of grants on a per-household basis, and requiring a percentage of the project to be paid by the household or the

owner of the property."[9] None of these potential limits are required; rather, they are put forward for the Commission's consideration. Just these limitations alone could severely restrict the number of individuals who will apply for line extension grants, so the Commission must tread carefully in considering limiting eligibility. Below is analysis of several of the limiting factors set forth in the ACR.

Wireline Components. The ACR asks what wireline components are eligible for funding. Wireline technology eligible for line extension funding should include all components connecting a current network to the demarcation point, excluding customer premise equipment, such as modems, installation and wire maintenance programs. Indeed, this is how many service providers typically estimate costs of line extension projects.

Cost per Foot. The ACR asks about the average cost per foot for line extensions (presumably to create some limit on the cost per foot for a line extension). Cost per foot for line extensions varies greatly depending on many factors, including terrain, existence of pole lines, community standards (*e.g.*, undergrounding ordinance), weather conditions (*e.g.*, frozen ground), and CEQA mitigation. So, it is difficult to determine a universal average cost per foot and therefore not advisable to implement such a limitation.

Total Cost Limits. The ACR asks about whether certain cost limits are sufficient to address properties far away from distribution facilities. The $1,000 limit per aerial line extension and the $3,000 limit per underground drop proposed by Race Telecommunications are entirely insufficient—not only to address properties far away but even for short distances in many cases. In fact, almost no projects would qualify for the subsidy if the program capped costs at these amounts. While CCTA does not oppose some price cap, it would need to be orders of magnitude larger than the amount suggested by Race Telecommunications.

[9] Pub. Util. Code § 281(f)(6)(B)(i).

Length. The ACR seeks comment on limits to the length of a funded line extension. Length is not among the limiting criteria contemplated by the statute, and as mentioned below, it is inadvisable to tack on additional limiting criteria that would hinder the program before it even begins. To the extent the Commission were to create a length limit, it would have to far exceed the 750 feet limit suggested by the North Bay North Coast Broadband Consortium. In the experience of certain CCTA members, 750 feet would be on the shorter end of line extension requests.

Respectfully submitted,

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