

**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
REPLY COMMENTS ON THE PROPOSED DECISION IMPLEMENTING
THE CASF INFRASTRUCTURE ACCOUNT REVISED RULES**

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Pursuant to Rule 14.3 of the Commission’s Rules of Practice and Procedure, the California Cable and Telecommunications Association (“CCTA”)¹ hereby respectfully submits to the California Public Utilities Commission (“Commission”) these Reply Comments responding to opening comments on the Proposed Decision (“PD”) in the above-captioned rulemaking relating to the California Advanced Services Fund (“CASF”). CCTA urges the Commission to adopt the PD with (1) changes to the CASF Rules attached to CCTA’s opening comments, and (2) an additional Ordering Paragraph requiring the Commission to immediately commence an additional phase of this proceeding, to be completed no later than April 1, 2019, to implement the Line Extension Program and adopt a modified expedited review process that corrects for legal errors.

I. Requiring Subscriber Information Fails to Align with AB 1665 and is Legal Error.

Multiple parties agree that requiring existing providers to submit subscriber data and individual customer information to the Commission does not align with the CASF grant eligibility provisions in Section 281.² Subscriber data review is proposed as a way to correct inaccuracies in the Broadband Availability Map depicting where existing infrastructure offers access to broadband at “served” speeds.

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

² Comments of Small LECs at pages 2 to 4; Comments of AT&T at pages 1 to 2; and Comments of Frontier at page 2.

But this falsely equates broadband *adoption* with *availability*, thereby enabling the prohibited award of CASF grants to fund overbuilds. Moreover, the reality is that broadband deployment is ongoing, and the map is always evolving. That is precisely why the Legislature provided for an opportunity to challenge each and every application, which is essential to avoid award of CASF grants to fund overbuilds.³ The Commission should reject legally flawed proposals for requiring subscriber and household data that have no foundation in Section 281 and violate customer privacy protections.⁴

II. Adding Requirements to the ROFR Process In Statute Is Legal Error.

CCTA proposed corrections to Rule 12 to ensure that the Right of First Refusal (“ROFR”) aligns with Section 281. Comments of some parties may reflect an interpretation of Rule 12 to require a provider filing a ROFR to guarantee service to every household in a census block.⁵ This illustrates why CCTA’s corrections are essential. Nothing in Section 281 or AB 1665 dictates the scope of a provider’s privately funded deployment project. Even the proposed CASF rules do not require grantees, that receive public funds, to offer service to every household in a census block, and so it would be especially unreasonable to require providers filing an ROFR to serve all households in each census block. Rather, the ROFR is an opportunity for providers to tell the Commission where they are investing private funds in order to ensure that CASF grants do not fund overbuilds. This process is consistent with the Legislature’s direction that CASF grants be awarded where private investment and federal funds are not available.⁶ Thus, to align with statute, the Commission should foster private investment, not turn the ROFR into a process for dictating the scope of privately funded deployment.

³ Section 281(f)(8) provides for a challenge, which is “vital to preserving the integrity of the program” (Comments of Small LECs at page 5).

⁴ CETF states an expectation that “data collected from providers will be more granular on the census block basis” and also refers to providers with merger obligations reporting data on a granular basis (Comments of CETF at pages 3, and 5 to 6). To the extent these comments are proposing data submission requirements beyond what is specified in the Rules, as proposed to be modified by CCTA, that would exceed the plain language of Section 281 and constitute legal error.

⁵ See, for example, Comments of CETF at page 5; and Comments of Race Communications at page 3.

⁶ AB 1665, Section 2(c).

III. The Line Extension Program Is Required by Statute and Will Help Ensure Deployment to the Most High-Cost Households in Census Blocks.

Many parties express concern with the need to extend broadband access to all households in a census block. The fact is that certain households may not be included in a privately funded project or CASF grant because the cost of deployment and ongoing provision of service is prohibitively expensive and uneconomic. This is precisely why the Legislature authorized the Line Extension Program – to provide a mechanism for funding deployment to households that undercut any business case for an otherwise viable deployment project. Thus, CCTA urges the Commission to adopt Finding of Fact 8 as revised by CCTA to ensure timely adoption of the Line Extension Program so this option can be considered when infrastructure grant applications under the new Rules are being developed.

IV. Award of CASF Grants by Staff with No Commission Resolution or Review is Legal Error and Should Not Be Adopted Until the Process Is Improved.

While the comments reflect general support for expeditious approval of CASF grants to close the Digital Divide, there are strong objections to the Ministerial Review process authorizing staff to award an unlimited number of \$5 million grants *with no opportunity for Commission review*. Multiple parties claim that the process violates the technology-neutral requirement by including only two technologies, and object to the specific cost-per-household maximums.⁷ CCTA strongly disagrees with CETF's comment that Ministerial Review provides "more transparency" to the CASF grant process.⁸ To the contrary, authorizing staff to award grants with no Commission review or Resolution is not only legal error, it prevents the public from ever knowing how staff makes many complex determinations, including how any challenge is addressed. The PD and the Rules specify no requirement for documenting grant award decisions under Ministerial Review. The accountability protection in Rule

⁷ See, for example, Comments of Public Advocates Office at page 4; Comments of Frontier at page 4; Comments of California Internet, L.P., at pages 1 to 2; Comments of CETF at page 4.

⁸ Comments of CETF at page 2.

17, which requires grantees to “sign a consent form agreeing to the terms stated in the *resolution* authorizing the CASF award,” does not appear to apply to grantees under Ministerial Review.

Given these gaps in transparency and accountability, combined with the unlawful delegation and technology-neutral legal errors, CCTA strongly urges the Commission to eliminate the Ministerial Review process from the PD. Taking more time to refine an expedited approval process in an immediate subsequent phase of this proceeding will produce a better result without legal error.

V. Disagreement as to What Qualifies as a Low-Income Offering Underscores How the Requirement Constitutes Legal Error.

Several parties join CCTA in strongly opposing the Rule 6 requirement that a CASF grantee “provide an affordable broadband plan for low-income customers,” which cannot exceed \$15 per month to qualify for full funding under Rule 2.2. Parties note that this exceeds the Commission’s jurisdiction, is not required by Section 281, adds complexity to application review, and ultimately adds one more mandate that discourages participation in the program.⁹ Significantly, the comments of parties that support an affordable offering mandate actually demonstrate even more so why this requirement is so unworkable and counterproductive to achieving the CASF *infrastructure* goal.

The PD and Rules specify an affordable broadband offering to be \$15, but CETF states that plans up to \$20 are affordable.¹⁰ Race and CETF define an affordable plan as one “with rates in the range of existing or past affordable offers by California broadband providers with no hidden fees or charges, and no credit check.”¹¹ TURN/Greenlining propose requiring an applicant to demonstrate that its low-income offering is priced at the “lowest-economically viable alternative” for the proposed project area as determined by “strict criteria” but not be more than \$25 “under any circumstance.”¹²

⁹ Comments of Small LECs at page 6; Comments of Frontier at page 3.

¹⁰ Comments of CETF at page 7.

¹¹ Comments of Race at page 5, Comments of CETF at page 7.

¹² TURN/Greenlining Comments at pages 7 to 8, and stating on page 14 that “the applicant should have the burden to demonstrate what is ‘affordable’ relative to the project area.”

These proposals contemplate complex Commission review to implement a low-income plan mandate or full funding, which would constitute legal error because the Commission does not have jurisdiction to determine rates for broadband service and Section 281 does not authorize it.¹³ Nor does the Commission have jurisdiction to specify service quality standards for broadband, as proposed by TURN/Greenlining.¹⁴ It also would be legal error to adopt the Public Advocates Office proposal that the Commission require all low-income offerings to be at minimum speed of 25/3, which even exceeds the Section 281 requirement for a CASF project service level to all customers.¹⁵

TURN/Greenling further proposes that the Rules must specify low-income criteria and processes for eligibility and renewal, all subject to audit, which would effectively require the CASF staff to duplicate the LifeLine program.¹⁶ These requirements are not based in Section 281, not within the Commission's jurisdiction, and would divert Commission time and resources from fulfilling the statutory obligation to achieve the program goal of deploying broadband infrastructure to 98 percent of households in each consortia region.

Respectfully submitted,

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¹³ Staff making discretionary subjective judgments as to these matters can become a denial of due process under Ministerial Review with no Commission Resolution. CCTA Comments at pages 10 to 13.

¹⁴ TURN/Greenlining Comments at pages 6 and 11 to 15.

¹⁵ Public Advocates Office Comments at page 3.

¹⁶ TURN/Greenlining Comments at pages 9 to 10.