

**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

**PHASE II REPLY COMMENTS OF THE
CALIFORNIA CABLE AND TELECOMMUNICATIONS ASSOCIATION**

Lesla Lehtonen
California Cable and Telecommunications
Association
1001 K Street, 2nd Floor
Sacramento, CA 95814
Tel. (916) 446 - 7732
Fax. (916) 446 - 1605
E-mail: Lesla@calcable.org

Date: May 1, 2018

**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

**PHASE II REPLY COMMENTS OF THE
CALIFORNIA CABLE AND TELECOMMUNICATIONS ASSOCIATION**

The California Cable and Telecommunications Association (“CCTA”) hereby respectfully submits these Reply Comments in response to initial comments filed by other parties on Appendix C of the February 14, 2018 Amended Scoping Memo and Ruling of Assigned Commissioner (“Staff Proposal”) in the captioned proceeding.

1. Eligible Applicants – Satellite Service Providers

In its initial comments, CCTA proposed removing the following sentence from Section 1.4 of the Staff Proposal: “the Commission will consider applications from satellite service providers provided that the applicants are able to prove functionality, and are able to meet the speeds required.”¹ Moreover, a number of parties submitted comments that support the goals of the California Advanced Services Fund (“CASF”) to limit grants to *infrastructure projects*. The Office of Ratepayer Advocates (“ORA”), for example, states that the “Commission should revise the definition of ‘facilities based broadband provider’ to make certain that all facilities eligible for the [Line Extension Program] are capable of providing broadband service that is comparable to services delivered over wireline facilities.”²

¹ CCTA Comments at 2-3 (referencing Scoping Memo, App. C, p. 7).

² ORA Comments at 14.

CCTA agrees, and notes the California Center for Rural Policy, the Rural County Representatives of California, the Upstate California Connect Consortium, and the Northeastern California Connect Consortium (collectively, the “Joint CCRP Commenters”) similarly are “concerned [that] the staff recommended definition [of facilities-based broadband provider] includes satellite transponder capacity.”³ Indeed, satellite broadband services are available largely throughout California today, and if their services meet the CASF criteria, there is little need for wireline infrastructure support.⁴

Other commenters expressed concern about the technical limitations of satellite-delivered broadband services. The North Bay North Coast Broadband Consortium (“NBNCBC”) noted that “unsatisfactory” satellite services delivered to more rural areas “do not effectively support at-home education and/or business” and “are not sustainable Internet solutions for the future in [the NBNCBC] region.”⁵ NBNCBC therefore recommends that the Commission “only support CASF grants where the provider is committed to deploying infrastructure that will not only meet the current minimum California standards but also have the capacity to increase speeds over time with minimal additional capital investment.”⁶ The Joint CCRP Commenters also note that satellite service “often [is] unreliable, particularly in inclement weather conditions, and will not meet the overarching goals of [Assembly Bill] 1665.”⁷ CCTA concurs with NBNCBC’s recommendation.

Finally, should the Commission elect to allow satellite service providers to apply for CASF grants, AT&T recommends that the scoring criteria account for latency, which is an important element of broadband customers’ overall experience with the service. CCTA concurs with

³ Joint CCRP Comments at 11.

⁴ See, e.g., <https://www.viasat.com/internet>.

⁵ NBNCBC Comments at 4.

⁶ NBNCBC Comments at 5.

⁷ Joint CCRP Comments at 3.

AT&T’s proposal that “CASF applicants specify the latency of their proposed service as part of their applications, and latency should be included in scoring applications for ranking purposes,”⁸ and low-latency projects (*i.e.*, those with a round trip latency of 100 milliseconds or less) should be awarded 20 points.⁹

2. Middle Mile Projects

In accordance with Assembly Bill (“AB”) 1665, the Staff Proposal properly requires an application for middle-mile infrastructure funding prove that the proposed middle-mile infrastructure is “indispensable” for accessing the last mile infrastructure.”¹⁰ In its comments, CCTA asked that the term “indispensable” be clarified to mean that there is no other middle mile service provider willing or capable of serving the area.¹¹ This request is appropriate because the word “indispensable” means “absolutely necessary, essential, or requisite.”¹²

Two other commenters, however, offered overly broad definitions of “indispensable” that do not comport with the plain meaning of the word and therefore conflict with AB 1665. The Joint CCRP Commenters state that “the Commission should clarify that new middle-mile infrastructure is ‘indispensable’ when existing infrastructure is ... unaffordable as determined in accordance with objective standards.”¹³ NBNCBC argues erroneously that the exclusion of middle mile projects in AB 1665 is “detrimental,” and therefore the definition of “indispensable” should account for middle-mile affordability that will make last mile projects “feasible.”¹⁴ The Commission should reject these efforts to “end run” the requirements of AB 1665. CASF funds are limited and clearly

⁸ AT&T Comments at 14.

⁹ AT&T Comments at 22.

¹⁰ Scoping Memo, App. C, p. 5.

¹¹ CCTA Comments at 5.

¹² See: <http://www.dictionary.com/browse/indispensable?s=t>.

¹³ Joint CCRP Comments at 5.

¹⁴ NBNCBC Comments at 2.

primarily intended to fund *last mile projects*, rather than costly middle mile projects (with rare exceptions). The terms “feasible” and “affordable” are nebulous, relative concepts that are not synonymous with the term “indispensable” and should not be used to evade the plain language requirements of AB 1665.

3. Application Item 3 – Description of Competitor’s Infrastructure

Item 3 of the Staff Proposal requires applicants to describe “*other provider’s infrastructure* within the project area which can be leased, purchased or accessed via interconnection.”¹⁵ (Emphasis added.) CCTA requested that this requirement be removed,¹⁶ and agrees with the concerns expressed by the Joint CCRP Commenters that “much of this information required is proprietary and not easily available and will likely delay applications.”¹⁷

4. Application Item 9 – Possible Performance Bond Relief

In its initial comments, CCTA stated that the performance bond requirement should be maintained because it serves as an important safeguard for the CASF Program in the event of a service provider default.¹⁸ The California Emerging Technology Fund (“CETF”) similarly noted that a performance bond is “important to help safeguard the integrity of the CASF program.”¹⁹ Race Telecommunications Inc. also supported the maintenance of a performance bond explaining that a performance bond “provide[s] important protections for the CASF program, from new, inadequately funded entities entering the market.”²⁰ In this regard, CCTA agrees with ORA that the performance bond is a “standard practice of the Commission,” “a valuable tool to safeguard

¹⁵ Scoping Memo, App. C, p. 9.

¹⁶ CCTA Comments at 6.

¹⁷ Joint CCRP Comments at 6.

¹⁸ CCTA Comments at 7.

¹⁹ CETF Comments at 12.

²⁰ Race Telecommunications Comments at 5.

ratepayer funds,” a guarantee for recovery of the “full grant money issued in support of the project,” and a beneficial “third-party check on the financial well-being of the company.”²¹

Some parties argued to eliminate the performance bond requirement.²² However, this is the minority position, and ignores the valid reasons offered by various commenters for maintaining the requirement. CCTA therefore agrees with the The Utility Reform Network and Greenlining Institute (collectively, the “Joint Consumers”), which support maintaining the bond requirement.²³ Alternatively, CCTA recommends that the Commission narrow the requirement to applicants “without a financial or operational track record.”²⁴ Those with a financial or operational track record would include not only Certificate of Public Convenience and Necessity (“CPCN”) and Wireless Information Registration (“WIR”) holders, but also Digital Infrastructure and Video Competition Act (“DIVCA”) franchisees.²⁵

5. Application Item 10 – Two-Year Price Commitment

In its initial comments, CCTA expressed concern about the two-year price commitment, and proposed that Application Item 10 be modified to limit the two-year price freeze to those applicants serving the application area using only CASF funds. Other parties also raised concerns about this obligation. For example, Frontier asked: “[w]ill the two-year pricing commitment apply to service provided via facilities from a line extension grant? If not required for a line extension, what is the rationale for requiring it for any CASF grant?”²⁶ CCTA recommends eliminating the price freeze because it would act as a significant disincentive to a potential applicant that provides retail service elsewhere in California.

²¹ ORA Comments at 9.

²² *See, e.g.*, Joint CCRP Commenters at 7.

²³ Joint Consumers Comments at 12.

²⁴ *Id.*, at 12-13.

²⁵ CCTA Comments at 7-8.

²⁶ Frontier Comments at 10.

NBNCBC states that the Commission:

should only award funding from the CASF if the wireline and wireless technologies are able to provide services for reasonable monthly prices, as determined by creating uniformity of a provider's individual service plans' prices among all regions in California. The reasonable monthly price should be the lowest price offered in all regions of California for the individual service plan.²⁷

CCTA submits that the Commission should not delve into service rates as this would be manifestly unsound policy; however, CCTA appreciates that NBNCBC acknowledges the importance of maintaining pricing uniformity, as CCTA has proposed.

6. The “Expedited Ministerial Review” and Request for Proposal (“RFP”) Processes

CCTA recommended that two proposals should be eliminated:²⁸ (i) Section 1.7 of the Staff Proposal, which proposes that staff be delegated the authority to conduct “expedited ministerial review” and approval of applications that meet certain criteria;²⁹ and (ii) Section 1.8 of the Staff Proposal, which proposes implementing an RFP process for “high-priority” areas for which no application has been received.³⁰

Like CCTA, a number of parties expressed significant concerns regarding these proposals. For example, Frontier is opposed to both proposed processes, arguing that there is no statutory basis for these processes and “the Commission should retain the current application process and not add new complexities with a state contract RFP process.”³¹ Frontier further explains that the state RFP process is “highly complex, highly criticized for causing delay, and would result in lack of uniformity if administered by a [Commission] office separate from the CASF program.”³²

CCTA shares Frontier's concerns and further agrees with ORA that:

²⁷ NBNCBC Comments at 6.

²⁸ CCTA Comments at 9-10.

²⁹ Scoping Memo, App. C, pp. 13-14.

³⁰ Scoping Memo, App. C, pp. 14-15.

³¹ Frontier Comments at 5.

³² Frontier Comments at 6.

The Commission should not implement this proposal; it should, instead, continue to require the Resolution process to approve Infrastructure Account applications. The Resolution process is an important tool to help ensure prudent use of ratepayer funds, which amounts to \$333 million for the Infrastructure Account. The Resolution process also provides transparency and an opportunity for the Commissions [sic] to hear from stakeholders and other interested parties, including ORA, during the compulsory comments period.

* * *

The proposal is also problematic due to the unreasonable cost-per-household thresholds, which are determined using the CASF program average (per technology).³³

Like CCTA, CETF opposes the proposed RFP process and echoes the concerns raised in CCTA's comments that the Commission may lack the expertise and experience necessary to prepare and review RFPs,³⁴ noting that the "Commission's Contracts Office for the Non-IT Goods & Services are not broadband infrastructure experts."³⁵

Other commenters, like CCTA, expressed concern about the cost thresholds and failure to failure abide by the mandate of technology neutrality set forth in Pub. Util. Code § 281(f)(1). For example, California Internet, L.P. d/b/a GeoLinks ("GeoLinks") stated that:

the process set forth for low-income communities creates a huge disparity between technology types. Specifically, Staff proposes allowing this streamlined process for fixed wireless projects only if proposed project costs are \$1,285 per household or less. However, for the same project area (and likely the same offered speeds, prices, customer service, etc.), Staff proposes an allowable project cost of \$15,650 per household for fiber builds – **more than 12x the amount allowed for fixed wireless projects**. Moreover, there is no limit proposed for satellite providers, assuming they are eligible to bid.³⁶

GeoLinks adds that the proposed "expedited ministerial review" process not only improperly "picks winners and losers in the CASF application process," but also "encourages

³³ ORA Comments at 10-11.

³⁴ CCTA Comments at 10.

³⁵ CETF Comments at 8.

³⁶ GeoLinks Comments at 3 (footnote omitted) (emphasis in original).

wasteful spending.”³⁷ Similarly, the Joint Consumers identify cost concerns with the proposed “expedited ministerial review” process, noting: “the Commission should ensure that this process provides incentives for applicants to minimize costs. The Commission can accomplish this by using more granular cost per household benchmarks for eligibility in the expedited review process.”³⁸ Finally, CCTA agrees with the Joint Consumers that, should the Commission implement the “expedited ministerial review” and/or RFP process, they should “transparent and subject to meaningful challenge”³⁹ in order to afford potential challengers their right of due process.⁴⁰

7. Annual Applications and Right of First Refusal

AB 1665 establishes a process whereby the Commission annually conducts an analysis of unserved and underserved areas in order to inform potential grant applicants of areas available for funding.⁴¹ The legislation provides that once the Commission issues its annual report, a provider would have a Right of First Refusal (“ROFR”) to demonstrate that it will build a network in a designated area within 180 days.⁴² Although some commenters characterize the ROFR process as one that “could block competition, innovation and opportunity,”⁴³ the process is statutorily mandated and serves an important purpose in directing scarce CASF resources away from areas in which market forces will in time drive the construction of broadband infrastructure using private capital. Given the statute’s annual process, it makes little sense, and is contrary to the statutory

³⁷ GeoLinks Comments at 4.

³⁸ Joint Consumers Comments at 1.

³⁹ Joint Consumers Comments at 8.

⁴⁰ See CCTA Comments at 9.

⁴¹ Pub. Util. Code § 281 (f)(3) (“The Commission shall identify unserved rural and urban areas and delineate the areas in the annual report prepared pursuant to Section 914.7.”)

⁴² Pub. Util. Code § 281 (f)(4)(A)(i) (“The Commission shall annually offer an existing facility-based provider the opportunity to demonstrate that it will deploy broadband or upgrade existing facilities to a delineated unserved area within 180 days.”)

⁴³ Gold Country Broadband Consortium Comments at 2.

intent, to create more than one annual application deadline.

Thus, CCTA agrees with AT&T that applications for CASF funding should be due on a specified date once a year.⁴⁴ CCTA also agrees with AT&T that an annual application “will enable providers to focus their resources and make the best proposals possible on that date, knowing that it is their only opportunity for the year” and “allow the Commission to evaluate all applications against one another and as part of a single process, better enabling the Commission to rank applications.”⁴⁵ However, once a grant proposal is submitted, a provider would have the opportunity to submit a separate challenge in order to show that the area is served,⁴⁶ so that the ROFR and the challenge process are two separate processes designed for separate purposes.

The Central Coast Broadband Consortium (“CCBC”) proposed unduly restrictive and punitive measures on the ROFR process that should not be adopted.⁴⁷ First, CCBC would impose penalties and render the provider ineligible for future ROFR process if the provider fails to complete promised upgrades with the specific time with limited extension. Such proposal ignores that there are circumstances completely beyond a provider’s control that delay or render impossible the completion of a project. Thus, while a bad faith ROFR may justify action, CCBC’s proposal is unduly harsh and restrictive. Second, CCBC proposes to significantly restrict challenges to a project to the 21-day challenge period with no opportunity even to comment on a draft resolution.⁴⁸ CCBC alleges abuses by challengers in the past but provides no detail or even examples.⁴⁹ The Commission’s goal should be to use limited public funding to provide service in truly unserved areas so information that an area is already served should be received by the Commission in any

⁴⁴ AT&T Comments at 3.

⁴⁵ *Id.*

⁴⁶ Pub. Util. Code § 281(f)(8).

⁴⁷ CCBC Comments at 3.

⁴⁸ *Id.*

⁴⁹ *Id.*

appropriate pleading.

8. Memorandum of Understandings

In addition to addressing proposals made in the Staff Proposal, certain parties elected to address other topics not within the scope of the proposal or the proceeding. For example, CETF wants to impose additional reporting obligations on facilities-based providers regarding construction plans implementing commitments made under Memorandum of Understandings (“MOUs”) imposed by regulatory authorities in corporate consolidations and mergers.⁵⁰ CETF suggests that such providers be required to submit verified reports every six months that include details on planned builds by area and households.⁵¹ Moreover, CETF urges the Commission to penalize providers if the provider does not build out the relevant areas.⁵²

CETF has been a party to such MOUs and should understand that they do not require such reporting because build out plans associated with these MOUs can and do change over time (*e.g.*, providers may encounter difficulties in permitting, environmental review or other issues which may require modifications). For that reason, the MOUs and related Commission orders do not impose advance reporting obligations on conditions other than what may be required in the MOU itself.⁵³ Imposition of the verified reporting obligations and related penalties in this context would be unduly burdensome and, for existing MOUs, would be an unlawful, retroactive revision to agreements that were carefully negotiated by all involved parties.

⁵⁰ CETF Comments at 3.

⁵¹ *Id.*

⁵² *Id.*

⁵³ See *e.g.*, *In the matter of the Joint Application of Charter Communications, Inc.; Charter Fiberlink CA-CC), LLC; Time Warner Cable Information Services (California), LLC; Advance/Newhouse Partnership; Bright House Networks Information Services (California), LLC Pursuant to California Public Utilities Code Section 854 for Expedited Approval of Transfer of Control*, D.16-05-007, mimeo at 70-71, Conditions 2(a) and (b).

CETF also proposes that: (i) the Commission encourage existing facilities-based providers meeting MOU obligations to commit to larger projects using CASF funds to drive to the 98% deployment goal; and (ii) providers should “be required to describe the process they used to evaluate how they might be able go beyond their specific application area and project to help achieve 98 percent deployment and why they concluded it was not feasible to achieve a greater impact.”⁵⁴ Contrary to the purpose of the underlying law providing funding that is intended to encourage entities to bid and participate in the CASF program, CETF’s proposal unreasonably extends obligations that have been negotiated with providers and imposes a burden above and beyond the commitments reached in those agreements. CETF’s proposal also unreasonably discriminates against providers that have made commitments to help achieve broadband expansion goals. Certainly, the Commission should assist a provider that seeks funding to go beyond the specific project, but there should be no mandate to do so or requirement for a provider to justify why it did not seek funding.

9. Line Extension Program

Regarding the Line Extension Program (“LEP”), CCTA stated in its comments that a service connection should be able to be combined with those of other applicants in an area to reduce the overall costs of a project and improve efficiency.⁵⁵ NBNCBC echoed this sentiment, and CCTA agrees that “an eligible project [should] be defined to also include multiple unserved households, which are owned by multiple property owners but represented by an individual representative applicant.”⁵⁶

⁵⁴ CETF Comments at 3-4.

⁵⁵ CCTA Comments at 12.

⁵⁶ NBNCBC Comments at 16.

However, other comments on the LEP missed the mark. CCTA strongly disagrees with CETF that “[t]here should be ... some kind of repayment to the CASF fund by the incumbents that assume ownership of the facilities to the CASF.”⁵⁷ Nothing in AB 1665 supports CETF’s proposal. Indeed, AB 1665 provides that line extensions shall be funded by “funds provided under this program”⁵⁸ and a required “percentage of the project to be paid by the household or owner of the property.”⁵⁹ CETF’s proposal, by contrast, would turn LEP funds into a loan, rather than a grant. Further, CCTA strongly disagrees with CCBC that the “Commission should require providers to abide by service and price commitments, eligibility and performance requirements, and standards of conduct that CASF infrastructure grant recipients must meet.”⁶⁰ CCBC is wrongly conflating the LEP, which funds a small fraction of a broadband service provider’s network, with Broadband Infrastructure Grants, which fund the construction of entire networks and for which service providers affirmatively seek CASF grants.

* * *

For the reasons detailed above and in its initial comments, CCTA respectfully recommends that the Staff Proposal be revised as set forth in CCTA’s initial comments and herein.

Respectfully submitted,

By: /s/ Lesla Lehtonen
Lesla Lehtonen
California Cable and Telecommunications
Association
1001 K Street, 2nd Floor
Sacramento, CA 91814
Tel. (916) 446 – 7732
Fax. (916) 446 - 1605
E-mail: Lesla@calcable.org

⁵⁷ CETF Comments at 6.

⁵⁸ Pub. Util. Code § 281(f)(6)(A).

⁵⁹ Pub. Util. Code § 281(f)(6)(B)(i).

⁶⁰ CCBC Comments at 9.

Date: May 1, 2018