

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Consider Modifications) Rulemaking No. 12-10-012
to the California Advanced Services Fund. _____) (Filed October 25, 2012)

**Comments of California Emerging Technology Fund
on Proposed Decision of Commissioner Guzman Aceves Implementing the California
Advanced Services Fund Infrastructure Account Revised Rules**

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Pursuant to Rule 14.3 of the Commission’s Rules of Practice and Procedure, the California Emerging Technology Fund (CETF) hereby timely files its comments on the Proposed Decision of Commissioner Guzman Aceves Implementing the California Advanced Services Fund Infrastructure Account Revised Rules (PD), issued on November 9, 2018. A non-profit organization formed by this Commission to work exclusively on Digital Equality issues relating to broadband infrastructure and adoption, CETF has filed numerous comments on the Phase II portion of the proceeding as an official party.

CETF is grateful for the many positive and thoughtful changes in the PD as we enter the next chapter of the California Advanced Services Fund (CASF) program, as amended by Assembly Bill (AB) 1665. Stepping back for a moment, CETF commends all responsible for the great progress our state has made on broadband infrastructure deployment and adoption since 2006 when the first California Broadband Task Force was formed by the Governor, leading to the first voluntary state broadband mapping and the initiation of the CASF program by this Commission to bring broadband infrastructure to all Californians. This program and the grantees have brought broadband to many communities that were previously on the wrong side of the Digital Divide, bringing new hope for their economies. Now this program is focused primarily on unserved areas of the state, and for the first time, on broadband adoption in unconnected communities. As communications technology becomes a critical enabler of our economy, education, healthcare, Smart Cities, and climate change/clean green initiatives, this Commission should be proud of what we have accomplished together thus far.

The passing of AB1665 evidences bipartisan support to bring broadband to areas of our state that still lack it, and for the first time to provide digital literacy education to those who are unconnected. In this Phase II PD, the Commission focuses on a job that the Legislature gave it

to revise its infrastructure program to achieve the 98% statutory goal in each Regional Consortia area. In reviewing the PD, CETF is gratified by the number of very positive and significant reforms. Among them are improvements to the California Broadband Map to make it more accurate and up-to-date, mandated annual reporting by incumbent providers that receive Connect America Fund (CAF) funding to try and achieve transparency on which locations will be built out in a census block, a more transparent and rapid application processing schedule, and important initiatives to bring broadband to unserved low-income communities.

In its initial Comments on Phase II issues, filed on April 16, 2018, CETF highlighted a few critical recommendations that it advocated most strongly. First was to not default to an overbroad interpretation of AB1665 that other Internet Service Providers (ISPs) cannot submit infrastructure applications for all FCC CAF eligible areas until 2020. The PD does not do this, but instead makes strides to obtain more accurate data for the California Broadband Map from providers at the census block level, and to obtain timely data from incumbents on CAF builds to obtain granular data down to the location/household level to mark eligible areas in CAF census blocks. CETF hopes these positive measures encourage independent ISPs to apply for unserved eligible areas, so that the combined efforts of the incumbents and independent providers will continue to bring new infrastructure to unserved areas.

The PD further adopts CETF's recommendation that there be reporting by incumbents receiving CAF II funds to indicate down to the household level where they intend to build out in each census block with CAF fund, and where they intend not to build. CETF is extremely grateful for this important mandate of reporting, which will ensure that broadband advancement will continue, by all broadband providers that wish to build to unserved areas ineligible for CAF funds.

Second, CETF also asked this Commission to give priority attention to all CASF infrastructure applications that scale to drive to 98% deployment and are the most cost-effective. CETF also asked that the Commission process the CASF applications more quickly, suggesting six months. CETF is very pleased to see a streamlined application process in the PD that not only strives to provide grants within six months, but it provides more transparency and certainty to the process. While CETF did not initially support an annual CASF application process, it understands why the Commission has chosen to do this, and appreciates the flexibility the Staff has to order a second round mid year.

Third, CETF is pleased that its plea for priority attention to low-income and other disadvantaged communities (rural, remote, farmworker, and Tribal lands) was recognized and acted upon in the PD. In the Funding Level Determinations (see Table 1 in PD at page 22), proposals to serve Low-Income communities (including farmworker communities) can increase a funding level for a project from 60% to 100%, which provides a strong incentive for providers. Similarly, projects that serve “inaccessible locations” (which may include rural, remote, and Tribal lands) may increase funding levels from 60% to 70%. These important reforms will help address the digital equality issues as to lack of adequate infrastructure in these low-income and disadvantaged communities. CETF commends the Commission for all of these important reforms.

On specific topics, CETF makes the following additional comments.

2.1 Determination of Eligible Areas and Served Status. CETF is very supportive of this portion of the PD which tries to solve two admitted problems with the past CASF program: (1) a service provider’s claims of service determines ineligible census blocks and yet not all households in a census block would have service actually available to them; and (2) the fact that the CASF review process has been lengthy. (PD, at page 8). While CETF was not supportive of the application process suggested by AT&T because it would delay service to the unserved areas unduly while the single list of eligible census blocks was established and a pre-application eligibility map challenge took place, CETF understands how the new proposed annual process in the PD will bring more clarity to truly unserved areas and will result in speedier grants in six months. The key to CETF’s support is the reforms on provision of the data to the Commission: namely that the data collected from providers will be more granular on the census block basis (down to location for CAF-funded incumbent providers), and the speed in which the Commission integrates this data into the broadband map. If the new application process goes as presented in the PD, CETF is cautiously optimistic that the broadband map will be more accurate and applications will be granted quicker, both of which are significant reforms.

2.2 Funding Criteria. In its prior Comments, CETF asked the Commission to encourage providers using CAF funds or meeting merger obligations involving infrastructure to commit to larger projects using CASF funds to drive to the 98% goal in each Regional Consortia area. (CETF Comments, at 3) In this PD section, new funding levels beyond the normal 60% are set forth for service to three categories: unserved areas, low-income communities, and the Section

281(f)(13) criteria, which are “inaccessible location”, “uses existing infrastructure”, and “makes significant contribution of program goal”). CETF commends this approach and hopes this will encourage the providers to drive to reach 98% of locations in each project area. In reporting related to these additional funding grants above 60%, the Commission should impose a reporting requirement that quantifies what level of coverage of the project area’s households was achieved by the build. This will inform the Commission of whether this approach was successful.

Section 2.3 Ministerial Review. CETF is disappointed that the new Ministerial Review process in the PD retains its very low project grant limit of \$5,000,000. (PD, at 26.) CETF continues to argue that this low project amount means this otherwise innovative process may not be very useful; CETF again suggests it be raised upwards (such as \$10,000,000) so it is more viable.

CETF also had supported calls by one party to raise the Median Household Income for the community from \$49,200 to \$63,783, the California median household income. This Median Household Income has only been raised to the current CARE program standard for a family of four which is now \$50,200. This low figure seems very restrictive to CETF.

Finally, CETF does not see any rationale whatsoever supporting the PD decision at page 26 to limit the Ministerial Review costs per household to \$6,000 for fiber projects and \$1,500 for fixed wireless projects. This disparity seems very extreme for a program that should be technology neutral. Further, the fiber amount in the PD is extremely low. In the Commission’s own 2016 CASF Annual Report (dated April 2017) at footnote 51, at page 43, it reported to the Legislature that the average of fifteen CASF approved fiber-to-the-home projects is \$9,442, inclusive of \$175 of middle mile costs. Thus for projects up to end of 2016, the average fiber-to-the-home cost is \$9,267/household. So there is no solid evidence to lower the Ministerial Review cost so low to \$6,000 for fiber projects. CETF would request this be changed to more realistic numbers supported by the average per household costs of past CASF grants for FTTH and fixed wireless projects, and consider arguments of technology neutrality.

Section 2.5 Reimbursement. CETF is comfortable with the 15% administrative expense cap, but suggests the PD be amended to allow for some flexibility with projects facing unusual circumstances to have a slightly higher cap, such as 20%. (CETF Comments on Eligibility and Prioritization, dated August 8, 2018, at 32) CETF’s anecdotal experience is that some projects legitimately have higher administrative expenses if it is a large or complex project, involving

high numbers of permits and/or environmental challenges. Further, CETF generally supports the final rules Payment section (see Appendix 1, Section 14 “Payment”), which allows a 10% modest up-front payment early in the process, with all payments dependent on performance. CETF would suggest a change to provide a higher up-front early payment – up to 25% – because it is our experience that start-up costs can be daunting for smaller players.

Section 2.7 Information Required of Applicants. CETF comments the PD on reforms on performance bonds and allowing letters of credit. These reforms should reduce burdens on potential applicants who are not large companies with deep pockets and a long-standing credit rating. As to the information required of the applicants, CETF finds the final list to be a reasonable compromise of necessary information but not competitively sensitive. CETF suggests that the environmental assessment be quickly reviewed upfront by CPUC CEQA staff to look for red flags such as scenic highways, crossing Tribal or sensitive cultural lands, or going through protected forest areas.

Section 2.9 Right of First Refusal. CETF commends the PD on requiring that those filing Right of First Refusals (ROFR) must commit that all households in the area has capacity to get minimum speeds of 10 Mbps download and 1 Mbps upload. (PD, at 41, third bullet point) The PD provides for a single extension of the ROFR for 180 days. CETF finds this acceptable so long as the provider shows actual significant progress. In comments, some parties requested that the evidence supporting the ROFR extension be required to be supported by an officer declaration, which CETF agrees is a good idea. Should the provider fail to build the facilities with no acceptable excuse, an officer declaration is sensible in order to hold the company responsible for blocking out projects by others. Fines or penalties should be considered in such circumstances, because the action may have been anticompetitive in nature and it has blocked earlier broadband service to consumers.

2.10 Treatment of CAF II Areas. As noted above, CETF is very pleased to support the new procedure set forth in Section 2.10.2 of the PD to annually collect data from incumbent providers that receive federal CAF to report to the Commission on completed CAF II blocks, the census blocks with locations that the provider has elected not to build to, and the blocks the provider has not yet determined whether to build. This a very important step towards improving the state’s broadband map and providing the Commission with important data on the CAF builds by the incumbents. (CETF also has recommended that providers with merger obligations

relating to infrastructure builds report their build data on an equally granular level relating to these public interest obligations.) If the data is timely provided to the Commission by January 15th of each year, it can be promptly integrated into the California Broadband Map. In this way, other independent providers will have adequate time to review all eligible areas and locations declined by incumbents for CAF funding, and to formulate their CASF applications by April 1st.

However while the PD decisional language makes this reporting mandatory, CETF points out that the language in the draft rules makes this new reporting requirement on incumbents who receive CAF funding *discretionary instead of mandatory*. See Appendix 1, Section 5.1, “Treatment of CAF II Areas” on page 9, where it says, “Providers *wishing to inform the Commission of their CAF deployment plans* must submit a letter by January 15th of each year to the Communications Division Director with a copy of the CASF distribution list, detailing the CAF II areas that have been completed and those that the provider is expressing its intent not to upgrade.” (Emphasis added.) CETF recommends that this language be amended to read, “Providers are required annually to inform the Commission of their CAF deployment plans, and must submit a letter by January 15th of each year to the Communications Division Director with a copy of the CASF distribution list, detailing the CAF II areas that have been completed and those that the provider is expressing its intent not to upgrade.” This is our most important requested edit.

2.12 Project Challenges. On project challenges, CETF commends the PD on ensuring timely challenges with clear language that late-filed challenges will be denied. CETF suggests two minor changes. First, that a challenger submit the challenge no later than 21 calendar days “from notice of the application being served on the service list” instead of the current language which says the challenge is submitted 21 days “from the filing of the application.” CETF suggests challengers need a full three weeks after actual notice of the application to prepare a response. Second, CETF suggests a minor addition to add an end date by which challenges are timely dealt with by CASF Staff, for example 30-45 days. CETF is aware of complaints by past applicants that late-filed challenges were accepted, and this disrupted the timely processing of CASF applications.

2.13 Minimum Performance Standards. CETF has reviewed the Minimum Performance Standards discussed at Section 2.13 of the PD. On service speed, CETF understands that the requirement that a minimum of 10 Mbps download and 1 Mbps upload is guaranteed is

necessary to comply with AB1665, but the Commission should include some type of incentive for a provider to provide a higher speed. The FCC’s current benchmark broadband speed is 25 Mbps download and 3 Mbps upload. In a November 20, 2018 blog, the current FCC Chairman has indicated his intention in a December action to raise the minimum broadband speed delivered to rural Americans via the Universal Service High Cost Fund up from 10 Mbps download/1 Mbps upload to 25 Mbps download and 3 Mbps upload.¹ This Commission should be equally willing to up the ante and provide incentives for speeds higher than 10/1. CETF would change the “Speed” bullet on page 60 of the PD to read: “Speeds: All households in the proposed project areas must be offered a broadband Internet service plan with speeds of at least 10 Mbps download and 1 Mbps upload, and preferences for higher speeds will be granted should there be competing applications.” (suggested language underlined)

In order to ensure affordability, CETF suggests that the broadband rate of low-income plans be within a range of existing or past affordable plans in the state with no hidden fees or charges and no credit checks. CETF’s experience is that rate plans at \$20 or below are affordable for low-income households. CETF suggests amending the “Affordability” bullet on page 60 to read “Affordability: All projects shall provide an affordable broadband plan for low-income customers, 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.” (suggested language underlined)

2.14 Priority Communities. CETF suggests that the list of priority communities for Regional Consortia regions be a prime focus of the annual Regional Consortia meetings with all stakeholders. The PD at Section 2.14.2 suggests that the Staff will develop a list of priority communities for broadband deployment for that consultation. CETF suggests that the priority communities should emanate from the Regional Consortia as a result of its work with the local leaders, providers and the community, which will then be brought to the Commission. Each county should be encouraged to have a list of prioritized communities that meet the statutory eligibility (i.e. unserved, speeds under 6 Mbps download and 1 Mbps upload).

¹ “Third, we’re recognizing that rural Americans need and deserved high-quality services by increasing the target speeds for subsidized deployments from 10/1 Mbps to 25/3 Mbps.” <https://www.fcc.gov/news-events/blog/2018/11/20/fccs-thanksgiving-menu-5g-rural-broadband-and-stopping-unwanted>

WHEREFORE, CETF respectfully requests that the its changes to the Proposed Decision be made consistent with its comments above.

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