**BEFORE THE PUBLIC UTILITIES COMMISSION**
**OF THE STATE OF CALIFORNIA**

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

**Comments of California Emerging Technology Fund on ALJ's Ruling on Eligibility For and Prioritization of Broadband Infrastructure Funds from the California Advanced Services Fund**


Sunne McPeak
President and CEO
California Emerging Technology Fund
414 13th Street, Suite 200
Oakland, California 94612
sunne.mcpeak@cetfund.org

Rachelle Chong
Special Counsel to California Emerging Technology Fund
Law Offices of Rachelle Chong
345 West Portal Avenue, Ste. 110
San Francisco, California 94127
rachelle@chonglaw.net


September 21, 2018

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Pursuant an Administrative Law Judge's Ruling Requesting Comments on the Eligibility for and Prioritization of Broadband Infrastructure Funds from the California Advanced Services Fund (ALJ Ruling) dated September 5, 2018, in the above-referenced docket, the California Emerging Technology Fund (CETF) hereby provides comments on the questions posed for comment in the ALJ Ruling. As noted before in our comments in this docket, CETF was the original sponsor of Assembly Bill (AB) 1665 and is able to share insights on what it believes is meant by the statute.

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

This specific question and all others in this first question must be answered with the understanding that AB1665 assigns full responsibility to the California Public Utilities Commission (CPUC) to achieve 98% broadband deployment by region. Therefore, in CETF's view, all rules and regulations should be promulgated in the context of determining the preferred cost-effect scenario in each region to fulfill the important broadband obligation assigned by Legislature to the CPUC.

As strongly recommended in our previous Phase II filings, CETF urges the CPUC to work with each Regional Consortia (especially those with high numbers of unserved households) to prepare a preferred scenario with a specific map (showing eligible areas and priority areas) to achieve 98% broadband deployment for that region. A "preferred scenario" for a region is more than just a list of priority unserved areas as have been identified by the Regional Consortia in the past. A "preferred scenario" identifies the priority unserved areas (highlighting low-income and other disadvantaged neighborhoods) on a regional map and delineates: (a) public assets that can be used to facilitate deployment (including access to public rights-of-ways, government properties, utilities poles, equipment hubs, and streamlining of permits); (b) strategic corridors for middle-mile backhaul (both existing and to be constructed); (c) FCC Connect America Fund Phase II (CAFII) eligible census blocks and other federal funding resources (Department of Agriculture, Rural Utility Service grants) to be leveraged; (d) special-purpose dedicated networks (e.g. CENIC, K-12 High-Speed Network, California Telehealth Network, FirstNet, public utilities agencies) that can be integrated into a deployment solution (for backhaul and/or backbone with appropriate reimbursement or compensation for access to meet with funding restrictions of the dedicated network); and (e) anchor institutions and public safety facilities that are unconnected or underconnected ("underconnected" defined as needing higher bandwidth). This important process developing the preferred scenario will illuminate the unserved areas within or adjacent to incumbent service territories to engage those Internet Service Providers (ISPs) to determine their interest to extend their broadband services to the unserved areas. This optimization of existing infrastructure can be the most cost-effective and thus in the public interest in that it avoids using CASF funds for duplicating infrastructure. However, this process requires the incumbent provider to participate and collaborate (which frankly has not often been the case in the past, but needs to be revisited and perhaps compelled by the Commission in the interest of the goals of the program). By definition, such a "preferred scenario" becomes the most cost-effective approach to achieving the 98% deployment goal, because: (1) it incorporates leveraging of public assets and other funding; (2) provides the regional context for determining the appropriate subsidy for any specific application; and (3) provides additional input and context for the CPUC to determine requisite levels of CASF subsidy overall instead of relying on only project-by-project analyses (with some CASF applicants insisting they require a 100% CASF grant without having taken into account the above 5 factors in a preferred scenario). Then, by definition, priority can and should be given to CASF applications consistent with the preferred scenario(s), with preference given to those applications that achieve or come close to achieving 98% deployment (that reach the most unserved households). In CETF's view, the "preferred scenario" process is the best approach to avoiding the current pattern of incumbent providers "cherry-picking" communities and seeking arbitrarily-high levels of subsidy that CPUC staff analyses have shown are not needed for a reasonable return on investment (ROI), even on an individual project basis.

Thus, in direct response to the specific question, the CPUC should consider a 100% subsidy only if: (1) a Regional Consortia has completed a preferred scenario and submitted it to the CPUC for review; (2) an applicant for a CASF project seeking a 100% funding grant has demonstrated that it has taken into account and optimized all five factors in the preferred scenario; and (3) the CPUC staff analysis on the individual project justifies 100% subsidy for a reasonable

ROI.

Section 281(f)(13) of AB1665 cited below (and the subject of the next question) does not preclude the "preferred scenario" approach, notwithstanding the reference to the Commission being granted the authority to "determine, on a case-by-case basis, the level of funding to be provided for a project" which is set forth in the above recommended 3-part criteria for considering full funding. This section, in fact, provides the foundation for considering the factors that CETF recommends, other than only location and accessibility.

In no case, should an Internet service provider be allowed to seek a 100% grant from the CASF for an area that is eligible for CAFII or other federal funding. California needs to leverage federal dollars and not substitute our limited state resources for their federal build out obligations.

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

b.

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

The terms "location and accessibility" in the statute need to be defined and recognized as two, but only two, of several factors to be taken into account regarding the level of the CASF subsidy. "Location and accessibility" was understood to mean that the CPUC has to verify that the subject area in the application meets the new definition of "unserved" and is consistent with other provisions of the bill. During the negotiations on AB1665, this section was included to emphasize that the CPUC should have the flexibility to consider factors other than "location and accessibility" in determining the funding level of an infrastructure grant.

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

During the negotiations on AB1665, the "existence of communications facilities" generally meant that an incumbent ISP: (a) had telecommunications or Internet service into part of the census block but not all locations; (b) had middle-mile backhaul to or through the areas; or (c) serves the area immediately adjacent to (contiguous with) an unserved area. As noted above, working with incumbents to extend facilities is in the public interest because of the existing infrastructure to be used to build off upon. However, the Commission should guard against the incumbent blocking the opportunity of independent ISPs to apply to CASF to build out an unserved area if the incumbent is not going to move forward expeditiously. That is why CETF proposed and supports a one-time right of opportunity to the incumbents with the "existence of communications facilities." The CPUC needs to continue to seek ways and opportunities to encourage and ensure that incumbents, particularly recipients of CAFII, to declare their intentions to the Commission of where they will spend their federal funds and when, so that unserved areas that are not going to be constructed before mid 2020 may be deemed eligible for CASF grants. The annual workshop, annual report, and Regional Consortia "preferred scenario" process are opportunities to illuminate whether or not incumbents with the "existence of communications facilities" are going to step forward.

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

CETF interprets this question as asking if a CASF incumbent applicant must actually use, and to what extent, its communications facilities in order to receive credit for doing so under the funding criteria of the statute. CETF contends that the incumbent must indeed actually actively use its communications facilities for it to be given credit under the funding criteria. As explained above, it is expected that it is less expensive and more expeditious for incumbents with existing communications (telephone and dial-up Internet) facilities to upgrade their existing facilities to broadband. If the facilities are so old as they are abandoned and out of use, this situation does not lend itself to a cost effective or timely upgrade and should not be counted.

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?"**

CETF does not recommend that an arbitrary number be adopted in determining a "significant contribution." Whether or not 300 households (HHs) is "significant" in any given region depends on how many unserved HHs exist in the region and if the location of the HHs in the region are so isolated from other unserved areas that they can only be served by dedicated middle mile and there are no other anchor institutions to be served along the path of deployment. CETF again strongly recommends the "preferred scenario" process to determine if an applicant is making a "significant contribution" to achieving the 98% goal in a region. Another important criterion for the CPUC to rely upon as to whether or not a project is making a "significant contribution" to the 98% goal in the region is if the Regional Consortium makes such a "formal finding" and files it with the CPUC.

**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?**

Income status of HHs is another one of the factors that the CPUC may take into account when considering an application per the statute.

**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.**

CETF agrees that unconnected public safety infrastructure is an important consideration and is identified in the scope of the "preferred scenario" above. CETF further points out that the Legislature included a third factor which is whether the project makes *a significant contribution to achievement of the program goal (which is 98% coverage in every consortia region)*. CETF suggests that this factor require the applicant to (1) serve all of an unserved area where there are households, anchor institutions, businesses and working farms, and (2) provide broadband service at the minimum speeds (10/1) to every household or business in the project area that requests it. This will ensure there is no "cherry picking" by a CASF applicant of high or middle income areas, versus low-income or very rural/remote areas in unserved areas.

**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?**

CETF strongly urges criteria to include consistency with a preferred scenario, as described above. CETF agrees that percentages should add up to 100% if the

CPUC is going to adopt a percentage scoring system. It also helps for public understandability and transparency. Given the Commission may adopt other factors besides the three enumerated ones in the statute, there should be flexibility to obtain points from various Commission-approved factors to reach 100% funding.

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

Yes. Please see the CETF recommendations immediately above.

**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.**
- **b. 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.**

CETF is a fierce advocate for affordable broadband offers for low-income communities because, as we have said in our prior filings in this docket, it is a fact that cost is a major barrier for low-income persons getting online. An affordable broadband offer is the equivalent of the Commission's CARE/FERA low income energy programs[1] and the Lifeline low-income telephone program.[2] CETF favors Commission action to ensure affordable broadband programs for low-income households similar to these well-established Commission programs. As a result, CETF supports a requirement that any *incumbent* provider be required to offer an affordable broadband plan if it receives a CASF grant. Further, CETF strongly urges the CPUC to require all the ISPs that have an available affordable offer for low income households (all of which were public interest obligations ordered by the Commission as a result of corporate mergers and consolidations) should have to disclose the number of HHs being signed up in California for those affordable offers if they are receiving any CASF funds. CETF does not support such a requirement for the smaller independent ISPs which have been deployment companies (such as Praxis / Inyo Networks or Race Communications), given their customer base is much smaller than an incumbent provider such as Frontier Communications, AT&T or a cable

[1] http://www.cpuc.ca.gov/General.aspx?id=976
[2] https://www.californialifeline.com/en/contact

provider. Having smaller ISPs deploy to communities that are low-income with a reasonably priced retail rate is acceptable. CETF notes that many of the small ISPs have voluntarily provided affordable offers for low-income persons, among them Race Communications, Inyo Networks and Anza Electric Cooperative.

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?**

An affordable rate for individual HHs are $10-$20 per month based on extensive focus groups (including within the last year) *except* for residents in publicly-subsidized multi-unit attached housing. As to publicly-subsidized multi-unit attached housing, this requires needs an entirely difference approach. This is why CETF sponsored AB1299 to establish the CASF Public Housing Account. AB1299 was seriously undermined by portions of AB1665, and CETF has already filed comments suggesting that the CPUC needs to do additional work to ensure affordable plans in this type of housing for our poorest residents.

**3)** ***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).**

We applaud the intent to streamline the CASF application process and process applications faster with a checklist approach of minimum performance requirements, but the most important criterion (or minimum requirement) is that an application is consistent with regional preferred scenario (as discussed above in our response to question 1) in order to reach the 98% statutory goal. CETF is deeply concerned that a set of "minimum performance requirements" approach will have the effect of inviting and rewarding sub-optimized applications: minimum performance requirements will encourage mediocre applications that just provide the minimum. This approach does not encourage applications that will drive results to the 98% goal mandated by the statute. As a result, CETF does not support this approach, particularly when coupled with the ministerial process proposed in the next question where small applications at or under $5 million get expedited treatment. This ministerial process equally invites and rewards small "cherry-picking" applications that are unlikely to achieve the 98% goal.

**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.**

<table>
<tr><th colspan="2">Maximum Funding Level: 100%</th></tr>
<tr><td colspan="2">Baseline for Eligible Project: 60% of total construction costs</td></tr>
<tr><td colspan="2">Presence of Dial-up Only: + 40%</td></tr>
<tr><td colspan="2">Low Income: Up to + 40%<br>● Median Household Income for community in application is less than $49,200.<br>● Applicant offers an affordable entry-level product to low-income customers.</td></tr>
<tr><td colspan="2">PU Code Sec 281 (f)(13) Requirement: + 10% per criterion, up to + 20%<br>● Inaccessible Location<br>● Uses Existing Infrastructure<br>● Makes a Significant Contribution to the Program</td></tr>
<tr><td>Ministerial Process</td><td>Resolution Process</td></tr>
<tr><td>Maximum Cost/HH<br>● $4,000 - 8,000 for wireline<br>● $1,500 for fixed wireless</td><td></td></tr>
</table>

<table>
<tr><td>Maximum Grant Amount: $5,000,000</td><td rowspan="2">Does not meet all criteria under Ministerial Process<br><br>Amounts, up to 100%, by commission determination</td></tr>
<tr><td>Must be CEQA-exempt, or approval letter must state that authorization to construct and release funds will be provided in a forthcoming resolution.</td></tr>
</table>

As noted above in our comments on the prior question, CETF does not support this general Ministerial Review approach, particularly when coupled with the Proposed Ministerial Process where small applications ($5M, CEQA-exempt, meeting cost/HH maximums) get faster processing. This Ministerial Process invites and rewards small “cherry-picking” applications that are unlikely to achieve the 98% goal.

CETF supports comments by others to considering moving the baseline to 80% from 60% due to the fact that unserved projects are much more costly than underserved projects. However, a grant of 80% or above should only be if the Regional Consortia has completed a preferred scenario (as described in our answer to question 1) and submitted it to the CPUC, the application is consistent with the preferred scenario and has optimized all five factors, and the CPUC staff analysis on the individual project justifies subsidy of higher than 60% for a reasonable return on investment.

CETF proposes to remove Presence of Dial-Up +40% because only unserved areas are allowed by AB1665 and so giving 100% (60% baseline + 40% for dial-up) for all unserved areas does not make sense.

CETF proposes to adjust Low Income to +10 (not +40% which is excessive), should there be a baseline move from 60% to 80%.

CETF supports Race’s proposal to change the Median Household Income factor under Low Income to the California Median Household Income of $63,784. Race has received ten CASF grants and its proposal on this point should be carefully considered.

Under Low Income, CETF supports the requirement that an incumbent applicant must offer an affordable entry-level product to low-income consumers, and that other applicants are strongly encouraged to offer an affordable plan for low-income consumers for a period of time. Further the Commission should consider mandating a range for affordable broadband monthly rate based on current offers of providers ($10-$20/month), with no credit checks, no monthly router fee, no data caps, and free installation.

Under "PU Code Section 281(f)(13) Requirement" CETF proposes +20, if the baseline is raised to 80% grants. CETF would amend the sub categories to provide more information as follows:

"Inaccessible Location (e.g. distance from middle mile, Points of Presence, and interconnection, very rural or remote, tribal lands)";

"Uses Existing Infrastructure Which Results in Lower Costs Per Household than CASF Average for Similar Projects";

"Makes a Significant Contribution to Program Goal of 98% Connectivity Per Region (e.g. Applicant agrees to serve every household in the project area if service is requested).

Further, CETF favors additional factors: (1) a project is consistent with a Regional Consortia's preferred scenario to reach 98% coverage goal in the project area; (2) it serves significant low-income communities (defined as those below the California median income), a disadvantaged community, or an unconnected anchor institution such as school, library, public health care facility such as a hospital or clinic, or an unconnected emergency responder or other public safety entity (e.g. CalFIRE facility); and (3) the applicant's financials for the project show it will not break even after seven years of operation.

CETF suggests the Ministerial Process Maximum Grant Amount be made much higher (e.g. $20 million) in order for projects to be scaled to reach the regional 98% goal, and not artificially limit the size of the project just to obtain faster ministerial approvals. By placing the Ministerial Process Maximum Grant amount at $5 million, it encourages small "cherry picking" applications instead of larger applications covering all the unserved areas that goes towards the mandated 98% coverage goal.

4) ***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?**

CETF generally supports a 15% cap on administrative expenses, but there should be some flexibility for an unusual circumstance for grantees up to 20%.

5) ***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?**

**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?**

AB1665 requires an incumbent to use its CAF funds first to build out as the households for which the provider accepted CAF funds. For additional unfunded, unserved households in the census block, the incumbent may apply for additional CASF funding before July 1, 2020. If the incumbent does not intend to build out the other households, it should be required to notify the Commission of this in a timely manner and that census block and those households should be eligible for CASF funding by any provider. In no event should the CASF program fund more than the total sum of households in a census block, otherwise there would be double funding.

**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.)**

CETF is technology neutral in its approach. A provider must meet the minimum broadband speeds, and any new latency requirements. CETF is aware that as to current technology, satellite broadband service requires line-of-sight to deliver an acceptable signal, and that often terrain, foliage and weather conditions can prevent reliable signals. CETF is confident that the Commission can adopt a policy that ensures reliable and quality service to consumers and that will take into account future changes in technology.

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.)**

See comments immediately above.

***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.**

CETF does not have enough expertise in this area to respond and urges the Commission to take into consideration the comments of experienced providers who have received CASF grants in the past.

*/s/ Sunne McPeak*

President and CEO
California Emerging Technology Fund
414 13th Street, Suite 200
Oakland, California 94612
sunne.mcpeak@cetfund.org

*/s/ Rachelle Chong*
Rachelle Chong
Special Counsel to CETF
Law Offices of Rachelle Chong
345 West Portal Avenue, Ste. 110
San Francisco, CA 94127
rachelle@chonglaw.net

September 21, 2018