

**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)

**Reply 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 Reply 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. CETF urges the Commission to put its focus on the new statutory goal to reach 98% deployment in every consortia region.¹ Not surprisingly, there are pushes and pulls between incumbent and independent providers, the Regional Consortia, and the many consumer groups on the PD. As a sponsor of AB1665 and a party directly involved in the Legislative negotiations, it was clear to CETF that industry “special interests” heavily lobbied for provisions that in our view are “protectionism” for incumbents that block competition from smaller, more innovative companies who seek to participate in the CASF program. In reviewing the incumbents’ positions, CETF is deeply concerned that if their positions are adopted, there will be continued delayed broadband deployment in unserved areas, not to mention continued “cherry picking” of communities for projects instead of collaboration on the overall goal with stakeholders. In making its final decisions, CETF respectfully asks the Commission to keep the overarching 98% coverage goal in mind as the yardstick that underlies every decision made in the new program rules, and to ensure transparency and fairness in the program.

2.1 Eligible Areas: The California Cable & Telecommunications Association (CCTA), Citizens Telecommunications Company (Frontier), Pacific Bell Tel. Company (AT&T) and the Small LECs² are uniform in their strong objections to the PD approach of using the presence of a single subscriber in a census block to validate deployment data in a census block.³ CCTA and

¹ Section 281(b)(1)(A). All citations to Section 281 refers to the California Public Utilities Code.

² Calaveras Telephone Company, Cal-Ore Tel. Company, Ducor Tel. Co. et al.

³ CCTA Comments at 3, Frontier Comments at 3, AT&T Comments at 1-2, Small LECs Comments at 2-4.

AT&T claim legal error stating that Section 281(f)(5)(A) bases census block eligibility for CASF funding on the *availability* of Internet service at speeds at least 6 Mbps download and 1 Mbps upload (6/1) or faster. CETF disputes the claim of legal error. AB 1665 sets the basis for eligibility as availability of service at the minimum 6/1 speed in the census block. What the PD clearly explains at pages 11-12 is that some of the deployment data proffered by incumbent providers “overstates broadband availability” due to erroneous deployment data, and that the Federal Communications Commission (FCC), US Department of Agriculture, and this Commission – all public agencies that grant funds for broadband development – are all struggling with this long time “bad data” issue.⁴ As the PD observes, the inaccurate incumbent data blocks broadband grants to unserved areas, leading to “significant frustration and confusion in communities hoping to improve broadband service using a CASF grant.”⁵ In the PD, the Commission proposes using verification of the presence of a single subscriber in a census block *only for the express purpose of validating submitted deployment data*.⁶ Despite allegations to the contrary, this is not improperly substituting a subscription basis for availability of service. It is merely *verifying data* the provider submitted as to availability of the service in a particular census block. This is legal under AB1665. Section 281(f)(8) provides that the Commission shall provide each applicant and challenger “the opportunity to demonstrate actual levels of broadband service in the project area. . . .” The word “actual” indicates the Legislature wanted proof of *actual service*, not merely claimed service. While it is possible a provider has provided broadband access to a census block and not a single customer has subscribed⁷ as the Small LECs suggest, this scenario seems an unlikely situation. The incumbents are uniform in asking the Commission to essentially “just trust us” on coverage.⁸ At this point, this position borders on the

⁴ The OIR establishing this docket, issued Nov. 1, 2012, spends two pages discussing how data from landline and wireless incumbents overstates broadband coverage. The Commission then observed, “Moreover, while both fixed and mobile wireless coverage is the basis for determining whether an area is served or underserved for purposes of determining areas eligible for CASF support, we believe that the number of areas currently designated as either unserved or underserved is understated. For example, data regarding fixed broadband availability is reported at the census block level. If fixed broadband service at a particular speed is reported as available in any part of a census block, the entire census block is shown on the National Broadband Map (NBM) as served, even though only a portion of the census block may be served at that speed, or at all.” See OIR in R.12-10-012, at pp. 9-10. See also fn. 19 describing the FCC’s similar observations.

⁵ PD at 12.

⁶ PD at 12.

⁷ AT&T, at 2.

⁸ See for example the Small LECs, who want the Commission to “accept information from carriers regarding the functionality of their networks, including speed tests, network engineering documentation reflecting facilities, and any other indicia of facilities capabilities. . . .” Small LECs, at 4.

ridiculous. The PD's "trust but verify" approach is eminently reasonable in light of the long-standing national and state problem of poor and inaccurate Form 477 data from the incumbents, which in turn impacts funding to projects for consumers living in unserved areas.

Section 2.2 Funding Criteria. Joint Consumers (TURN/Greenlining) note that the PD may err on page 20 where it only gives 100% funding for areas with "dial up". They suggest it should properly be dial up or speeds of less than 6/1. On low income offers, such offers are appropriate because they are voluntary and not mandated. Further, CETF supports the Joint Consumers who request minimum performance standards for low income offers, and that the low income offer be for the entire project area.⁹

Section 2.3 Ministerial Review. CCTA challenges the proposed Ministerial Review (MR) process proposed in the PD.¹⁰ This challenge is misplaced. There are multiple examples of programs where the Commission has delegated authority to Communications Division (CD) Staff so long as specific standards and guidelines are set forth for such action. This MR process is no different. Many parties challenge different aspects of the MR program, but CETF commends the Commission on its initiative represented by the MR. This MR process will bring targeted, cost effective broadband projects faster to unserved areas in the state, and on that grounds alone, CETF strongly supports the process. CETF continues to advocate for higher total grant amounts (up to \$20,000/project) to make the MR process more useful to applicants.

CETF declines to get involved in the dispute over costs per household limits for the MR process. Costs differ for each unique project (based on the terrain, local assets that may be leveraged, available back haul, etc.) and so CETF does not think there's a magic number for fiber, fixed wireless, DSL, or coax cable, and thus, none should be adopted. Adoption of a poor cost per household number may limit otherwise meritorious projects. CETF would remove the cost per household cap, and instead during review, have the CD Staff look at the proposed costs using benchmarks from past projects, but also looking at the specific challenges of the unique project. If it is still an unserved area now, there is a good reason for it.

Section 2.4 Middle-Mile Funding. CCTA claims Section 281(f)(11) is not complied with because the PD does not require a CASF applicant to initially demonstrate it did not seek grant funding to lease backhaul services, or for an existing provider to upgrade its facilities to provide

⁹ Joint Consumers, at 5-6, 12-13 and fn. 18.

¹⁰ CCTA at 10.

interconnection.¹¹ CCTA ties this to Section 281(f)(5) which requires any proposed middle mile infrastructure to be “indispensable for accessing the last-mile infrastructure.”¹² CETF finds what the PD proposes in Section 2.4 in complete alignment with both the cited sections. The PD states at page 30 “an applicant, in its application, should include documentation demonstrating that it requested specific data and/or transport services from a provider and that provider was not able to meet that request and offered no other alternative.” This meets CCTA’s concern about Section 281(f)(11). The PD at page 29 also requires any middle mile infrastructure to be deemed “indispensable” if applicants are, absent building additional infrastructure, unable to deliver last-mile service at reasonable quality and price levels. The concept of “reasonable” quality and price levels is then discussed in the PD. Pricing for wholesale access is generally competitive, except for in rural or remote areas where generally one or two providers (usually a rural telephone and cable company) own most of the data, transport or dark fiber facilities. In those types of areas, the PD gives Commission Staff instruction to approach those challenges on an individual basis until it has a sufficient record to make judgments on what prices and terms and conditions for wholesale service are reasonable. This is akin to the Commission’s role in determining reasonable interconnection rates for telecommunications services under the Telecommunications Act of 1996; as such it is not outside CD’s expertise. CETF posits that the PD addresses the main concerns of CCTA and there is no need for the detailed and burdensome attestation it wishes to impose on independent applicants on page 6 of CCTA’s Comments. The Public Advocates Office (PAO) at page 5 advocates limiting funding of middle mile leases to no more than five years to be consistent with PU Code 281(f)(11)(B). This well-intentioned change will result in disallowance of more cost effective IRU leases of dark fiber, typically 10-25 years in length,¹³ and should be disregarded as resulting in more expensive projects. CETF further agrees with Central Coast Broadband Consortium (CCBC) that suggests a correction of an inadvertent error in the PD that may be read to suggest Layer 1 facilities (dark fiber) are not allowed but Layer 2 and 3 services (transport and data services, respectively) are allowed for funding.¹⁴ Layer 1, 2 and 3 services all should be funded.

¹¹ CCTA at 5.

¹² *Id.*

¹³ See for example, definition of dark fiber IRU on Wikipedia noting the typical length of a lease is 10-25 years in length. https://en.wikipedia.org/wiki/Indefeasible_rights_of_use

¹⁴ CCBC at 2.

Section 2.10 Treatment of CAF II Areas. Two incumbents note that FCC CAF II reporting is March 1st and so the PD's annual due date for CAF II information of January 15th does not work.¹⁵ Should the Commission move the important CAF II reporting date to March 1st, CETF suggests shifting the annual application dates later by 45 days.

Section 2.12 Project Challenges. Relating to application challenges, CCTA asks for challenges after every amendment to an application.¹⁶ CETF disagrees. A challenger should have one bite at the apple to prove it provides broadband service at or above the required 6/1 speeds. The record reflects comments by past CASF applicants that have complained that they were subject to more than one challenge in the past, and this was time consuming, costly and discouraged them from participating in the CASF program.

CCTA further wants every challenged decision to require a Commission resolution to resolve.¹⁷ There is no reason why the Commission cannot delegate authority to the staff to resolve a challenge to a CASF application. Challenges require the staff to perform analysis to see whether the challenger already provides broadband service to the project's proposed area. This is technical analysis that is factual in nature; it does not require the Commission's attention to a policy matter.

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

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¹⁵ Frontier at 6. AT&T at 3-4.

¹⁶ CCTA at 2-3.

¹⁷ CCTA at 4.