BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Consider Modifications to the California Advanced Services Fund	)))))	Investigation R.12-10-012 (filed October 25, 2012)

COMMENTS OF CITIZENS TELECOMMUNICATIONS COMPANY OF CALIFORNIA INC. (U-1024-C), FRONTIER COMMUNICATIONS OF THE SOUTHWEST INC. (U-1026-C), AND FRONTIER CALIFORNIA INC. (U-1002-C) ON PHASE II STAFF PROPOSAL APPENDIX C OF THE RULEMAKING TO CONSIDER MODIFICATIONS TO CALIFORNIA ADVANCED SERVICES FUND

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Citizens Telecommunications Company of California Inc. d/b/a Frontier Communications of California (U-1024-C), Frontier Communications of the Southwest Inc. (U-1026-C), and Frontier California Inc. (U-1002-C) (collectively "Frontier"), pursuant to Rule 6.2 of the Commission's Rules of Practice and Procedure, hereby submits to the California Public Utilities Commission ("CPUC") comments on the Phase II Staff Proposal ("Proposal") for California Advanced Services Fund ("CASF") infrastructure grants in Appendix C to the "Amended Scoping Memo and Ruling" dated February 14, 2018.[1]

I. The CPUC Should Not Delay Implementing AB 1665 with New Complex Processes and Should Instead Offer an Immediate Full Funding Opportunity for High-Cost Unserved Areas.

The Proposal includes significant changes and new processes for filing, review and approval of infrastructure grant applications. Some proposals relate to new program elements

[1] Frontier provides voice, video and broadband service in California. The need for better broadband service was a major theme in the CPUC approval of Frontier's 2016 acquisition of Verizon wireline operations, and Frontier made multiple broadband deployment commitments. Frontier accepted $228 million from the Federal Communications Commission's ("FCC") Connect America Fund ("CAF") program to expand broadband to 90,000 locations by 2020. Frontier also committed to expand broadband access to an additional 740,000 households by 2022 with private investment and CASF grants. Frontier has participated in the CASF program since it began and has completed eight separate CASF projects. Two additional grant applications are pending.

required by AB 1665, and others are CPUC-initiated proposals with the stated goals of increasing program participation and speeding up award of CASF grants. Frontier supports these goals, but, as explained in more detail below, is concerned that overly complex new processes and new program criteria not required by statute will actually deter participation and further delay award of grants.

Moreover, Frontier respectfully suggests that the Proposal does not adequately focus on implementing the provision of AB 1665 that most directly addresses the key factor that has deterred providers from seeking grants for the high-cost unserved areas – lack of full funding for CASF project costs. Legislative deliberation on AB 1665, the CPUC's 2017 White Paper[2], CASF Workshop Report[3], workshop discussions, and comments in prior phases of this proceeding over the years have identified this key factor, and the Legislature responded directly with this full funding provision in AB 1665:

> Public Utilities Code Section 281(f)(13)
>
> The commission may award grants to fund all or a portion of the project. The commission shall determine, on a case-by-case basis, the level of funding to be provided for a project and shall consider factors that include, but are not limited to, the location and accessibility of the area, the existence of communication facilities that may be upgraded to deploy broadband, and whether the project makes a significant contribution to achievement of the program goal.

The Proposal includes only one brief paragraph regarding this provision and, with no explanation, proposes to implement it only for projects that serve low-income census blocks.

Instead of a robust proposal to implement the full funding provision as a critical strategy to achieve the 98% goal, staff proposes creating yet another list of high priority project areas, even while acknowledging that prior attempts to attract applications under a similar listing model have not been successful. A new "High-Priorities" list is made even less likely to entice applicants by combining it with a new Request for Proposal ("RFP") process, which requires applicants to follow the complex and burdensome state contract process and requires another CPUC office with no prior CASF experience to manage the RFPs and award contracts. The

[2] "High Impact Areas for Broadband Availability - Staff White Paper." (February 2017).
[3] CPUC May 25, 2017 CASF Workshop Staff Report.

Proposal simply fails to address the key fact that a list and a new process are inadequate to attract CASF applications for areas where deployment still lags – the rural areas that are the most expensive to serve because of remote location, sparse population, rough terrain, and frequently above-average poverty rates. The fact is that these areas are so uneconomic to serve that there will never be a business case to invest without higher CASF project funding, and that is why no applications to deploy broadband have been filed in these areas over the many years the CASF program has existed.

Thus, Frontier proposes that the CPUC act immediately to implement the full funding provision of AB 1665. Two CASF applications for unserved areas are pending that specifically request full funding under the case-by-case determination required by that legislation, and each articulates multiple factors that justify full funding. By Resolution in either of those applications, or in a separate ruling issued as soon as possible, the CPUC should declare that it will fulfill the mandate of AB 1665 and accept applications no later than July 1, 2018, and award full funding of eligible infrastructure projects if an applicant demonstrates justification for that funding.

In the optimistic scenario that the CPUC is flooded with CASF applications seeking full funding, the CASF staff can prioritize projects according to preferences specified in statute – projects in consortia regions below the 98% goal, in areas having no service or only dial-up service, projects that utilize existing infrastructure or leverage federal investment. If more than one application for the same area is filed, staff can use its scoring criteria and award full funding to the superior application.

Another option would be to announce an initial application window for projects seeking full funding and limit it to projects in consortia regions currently below 98% deployment, where total project costs are below $5 million, and/or cost per-household is below $3,000. This approach will allow the CPUC to gauge early on provider interest in deployment if full funding is available and will inform the CPUC how to refine its implementation of the full funding provision – a better approach than speculating what rules to impose that are not based on actual provider response to this new opportunity under AB 1665.

The CPUC should take immediate, bold action to follow the clear direction of the Legislature to stimulate CASF applications under the full funding provision. Under the Proposal, November 2018 is the target date for a final order on the infrastructure grant process, with April 30, 2019 as the first date for accepting new applications. Assuming timely review, this would result in CPUC action on applications in late 2019 – more than two years after AB 1665 took effect. Frontier strongly urges the CPUC to avoid delay through multiple rounds of comments and workshops, and instead act now to exercise existing authority under AB 1665 to incentivize applications that will begin chipping away at the goal of 98% by consortia region.

II. The CPUC Should Follow the AB 1665 Requirement to Consider Full Funding for Infrastructure Grants on a Case-by-Case Basis and Not Make Low-Income the Exclusive Justification for Full Funding.

On page five, the Proposal states that the CPUC may award 100% of eligible infrastructure project costs in low-income area census block groups and may award 80% of total project costs for projects with areas exceeding the $49,200 low-income standard. Frontier supports the proposal that low-income status of an infrastructure project area could justify full funding of a CASF project. However, under current law, low-income status cannot be a mandatory condition for full funding, nor the only factor that justifies full funding. Nothing in the plain language or legislative history of AB 1665 supports this aspect of the Proposal.

Instead, AB 1665 authorizes the CPUC to award full funding for any project and provides that the CPUC shall determine, on a case-by-case basis, the level of funding to be provided for a project and shall consider various factors. If the Legislature intended that low-income status be a mandatory or exclusive justification for full funding, it would have expressly stated this, similar to how it expressly provided in statute for priority for low-income areas for broadband adoption grants. As demonstrated in pending CASF applications seeking full funding, many public interest factors can justify full funding.[4]

[4] Similarly, the Proposal (page 5) to set aside a minimum of $100 million of the new $300 million in the Infrastructure Grant Account "to benefit low-income communities through all forms of applications" is not required or authorized in statute. In fact, it is possible that such a set-aside would be counterproductive to achieving the 98% by region goal if projects that would otherwise be funded and achieve that goal are not for communities that meet the low-income threshold. Moreover, this proposal lacks any discussion of how it aligns with other draws on the Infrastructure Grant Account authorized in statute – up to $5 million for line extension projects, up to $30 million for projects to increase existing service to 10/1 speed, and an unknown but seemingly unlimited amount for Public Supported Communities once funds in the Public Housing Account are exhausted.

III. The CPUC Should Retain the Current Application Process, Aligned with AB 1665, and Not Add New Complexities with a State Contract RFP Process.

Frontier supports the goal of an infrastructure grant application process to expeditiously fund projects to meet the 98% goal and other requirements of AB 1665. However, Frontier does not support adopting complex new application processes that are not required by AB 1665, are untested, and will create a year or more of delay to begin implementation. Given the urgency to get CASF projects moving, and recognition that a costly and burdensome application process deters providers from applying for grants, the CPUC should focus on refining and improving the current process consistent with specific direction in AB 1665.

The Proposal on page 13 correctly observes that the CASF program currently "does not have an expedited process to quickly review <u>low-cost projects</u> and approve without a resolution." But then staff goes on to propose two new processes that do not address low-cost projects, but rather apply only to projects for <u>low-income areas</u> – (1) an "Expedited Ministerial Review" for low-income areas, and (2) a RFP process for a list of "High Priority" areas the CPUC will establish, defined on page 7 to be "projects with low-income census tracts."

As proposed, the Expedited Ministerial Review process is available only for projects that meet eligibility requirements and two other criteria – mandatory low-income status of the project, and below average cost per household. Frontier identifies no statutory basis for making low-income status a mandatory requirement for expedited treatment. In addition, Frontier objects to the cost-per-household criteria as proposed on page 14 of the Proposal. The three categories – (a) upgrades using existing infrastructure, (b) new fiber to the home projects, and (3) fixed wireless projects – are flawed in several ways. They fail to consider that high quality fiber to the home projects may use existing infrastructure, and at a much lower cost-per-household than the $15,650 per household identified in the Proposal. It is well established that the CASF program with current funding cannot make significant progress toward the 98% goal if it continues to fund the extremely expensive fiber projects documented on page 75 of the May 2017 CASF Workshop report – some more than $23,000 per household. Use of prior CASF cost per household as a criteria for expedited treatment is not justified, prudent, or pursuant to any legislative direction.

Consistent with staff's observation of the need for an expedited process for <u>low-cost</u> projects, Frontier proposes that a maximum total project cost be a mandatory requirement if an expedited ministerial review process is adopted. For example, a $5 million total project cost would be reasonable as a requirement for expedited review to ensure expensive projects get more thorough analysis and the accountability that comes with a vote of the Commissioners. Other criteria that could be relevant as indicting either simplicity of a project moving forward or a statutory preference, include the following: no challenges filed against the application, unserved project area with only dial-up Internet access, the project is outside a CAF II area or in a CAF II area with CAF provider as applicant, prior to July 1, 2020, no history of private investment or any other provider seeking a CASF grant or federal funds, in a consortia region below 98%, and leveraging existing infrastructure.

Frontier further asserts that an expedited ministerial review process would be best implemented if based on actual experience of the CPUC receiving multiple applications, such as would likely follow an immediate opportunity for full funding as proposed above. With actual grant applications on file, the CPUC could evaluate the criteria of real projects that make sense for expedited review. This approach is far preferable than spending several rounds of comments and workshops speculating on how to process applications that would not even be filed until well into next year.

Regarding the second alternative to a CPUC resolution – the RFP process, Frontier strongly objects to the proposal to use the state contract process for CASF grants. It is highly complex, highly criticized for causing delay, and would result in lack of uniformity if administered by a CPUC office separate from the CASF program. The proposal states that the RFP would be issued if no applications are filed for service areas on a list that likely would replicate the prior consortia priorities list and CPUC's High Impact list. It is unclear why a provider would participate in a complex RFP process rather than just file an application. Moreover, the Proposal does not indicate if the RFP award would provide full funding of project costs. Finally, the Massachusetts RFP program the Proposal references appears to be part of a state municipal broadband program, so an apples and oranges comparison.

Frontier urges the CPUC to not divert precious time and resources on considering and implementing a new complex RFP process, and instead focus on developing an expedited review process based on response to applications from an immediate opportunity for full funding pursuant to AB 1665.

IV. The CPUC Should Consider Line Extension Grants in a Separate Phase III to Avoid Further Delay in Award of Grants to Reach the 98% Statutory Goal.

The line extension provision in AB 1665 is an entirely new and complex aspect of the CASF program that warrants a more complete review in a separate Phase III of this proceeding. The legislation specifically directs the CPUC to determine program elements including income eligibility, an overall per-household maximum grant amount, and required contribution by the household or property-applicant. Many additional details not specified in statute also must be worked out before grants can be awarded, and with no CASF line extension history as a benchmark and virtually no legislative history as guidance. Moreover, the following legal and policy questions – not even raised in the Proposal – must be addressed by staff at the outset:

- Accountability -- How will the CPUC ensure accountability for CASF funds awarded for a line extension sufficient to meet the standards set forth in the State Controller Office audit for CASF infrastructure grants, as referenced on page 19 of the Proposal? Who is to be held accountable – the household/property owner, or the service provider that is given ownership of the CASF-funded facilities? How will the CPUC enforce CASF grant requirements such as the two-year price commitment?
- Gift of Public Funds -- Does transfer of ownership of facilities paid for with CASF funds to a service provider not the applicant amount to an impermissible gift of public funds in violation of Section 6 of Article XVI of the California Constitution?

Addressing these critical issues in a separate phase will ensure they get adequate review and not create more delay for the general infrastructure grant program. In fact, expeditious deployment of larger CASF projects could bring service to many households or property owners who may otherwise think they are eligible for a line extension grant. Also, given the relatively small amount of CASF funds for the line extension program, it makes no sense to bog down CPUC staff resources figuring out all the complexities of the line extension program. Focusing first on the general infrastructure grant program is necessary to begin to make some progress on achieving the 98% goal. Thus, Frontier urges the CPUC to move consideration of the line extension program to a Phase III of this proceeding after a Phase II decision.

V. Pre-Grant CEQA Review, If Extensive, Should be Reimbursed In Order to Attract Applications and Meet the 98% Goal.

Frontier supports the Proposal goal of ensuring that a CASF grant provides enough resources to meet project expense for CEQA review and permits. However, Frontier is concerned that requiring too much preliminary CEQA review before a grant is awarded will deter providers from submitting applications. The Proposal on CEQA information in the project summary and project expenditures on pages 9 and 11, along with the requirement to attest to Energy Division review on page 13, all would require more time and resources than currently required before filing an application. The detailed engineering of a proposed project to meet these proposed requirements is simply too costly to incur with no guarantee of a grant being awarded. Frontier therefore proposes that these requirements be adopted only if the CPUC provides reimbursement for these pre-application steps even if the grant is not awarded.

Regarding the Proposal on page 19 that the CPUC Energy Division retain and pay CEQA consultants directly, Frontier is concerned that this may also create delay, invite more analysis than may be required, create confidentiality problems, and be unattractive to providers who undertake simultaneous CEQA review for multiple projects including those not seeking CASF funding.

VI. CAF II Providers are On Track to Meet FCC Requirements and Seek CPUC Action on Pending CASF Application to Enable Leveraging Federal and State Funds.

On page 16, the Proposal asks two questions regarding CAF II providers. The first question is how to incentivize CAF II providers to build out their CAF II obligations in a timely manner. The answer is that the FCC rules provide incentives to build out in a timely manner because penalties and forfeitures apply for failing to meet annual deployment milestones. Frontier has already reported that it exceeded its 2017 requirements and is on track with its multi-year deployment to 90,000 locations by 2020.

The second question posed asks how a CAF II provider shall notify the CPUC before July 1, 2020, that it has either completed or elected not to build within CAF II census blocks.

Frontier has already made such a notification with respect to CAF II census blocks in its pending Desert Shores CASF application, electing not to use CAF II funds to serve a very small number of CAF-eligible locations in Desert Shores and instead seeking a CASF grant to serve the larger unserved community. Frontier seeks expeditious action from the CPUC on this application, which will inform whether to pursue a similar approach in other CAF II areas. CPUC action on this application as soon as possible will enable further planning to leverage CAF deployment that must be complete by 2020.[5]

VII. Many Staff Proposals Require More Clarification or Explanation of How They Help Achieve the 98% Goal.

- **Scoring Criteria (Page 18)**

  Frontier is concerned that the scoring criteria, as acknowledged in the Proposal and Workshop Report, have little utility except when comparing competing applications and therefore mostly create delay in review and approval of applications. Frontier objects to adding five bonus points merely for submitting letters of support, urging the CPUC to instead view support letters as statements that can help identify factors that justify full funding. In addition, Frontier requests that the Proposal be clarified to explain how the scoring criteria align with statements on page 5 that the CPUC "give preference" to projects with only dial-up service and no wireline or wireless; "require where possible that projects leverage existing networks and existing infrastructure," and give "special consideration" to projects that optimize dig once. Statutory preferences should be the primary consideration with any scoring criteria secondary. More clarity is needed on what is being proposed.

- **Project Eligibility (Page 10)**

  The Proposal states that areas are eligible if they are within eligible census blocks – "unserved blocks that are not within a CAF II, ROFR, or existing CASF project area." Does the reference to an "existing CASF project area" mean only

[5] Frontier recognizes that some period should be allowed for public notice of eligibility after a CAF II notice is submitted.

an approved CASF project? For an application filed but not approved, at what point after application and before a Draft Resolution does that proposed project area become ineligible for filing a competing application?

- **Project Viability Test (Page 13)**

  The Proposal recommends that a CASF applicant submit project viability information, but it is unclear how this will be used in determining the disposition of an application. On page 11 there is reference to using a viability test as an alternative to a performance bond requirement. What standard will the CPUC apply to deem a project as viable?

  If detailed project viability information is required, the CPUC must treat it with full confidentiality protection and recognize that each provider may use a different formula and assumptions for determining when an infrastructure investment is viable. Frontier urges the CPUC to not create an overly burdensome project viability test as a substitute for the plain fact that the lack of any provider seeking to deploy infrastructure in a project area for the duration of the CASF program is likely the best indicator that a project is not viable without full funding.

- **Pricing Commitment (Page 12)**

  Will 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?

- **Submission and Selection Timelines (Pages 16-17)**

  Frontier strongly urges retaining the current rolling admissions process rather than an annual or even bi-annual application deadline, which has already been tried and abandoned. If application windows are adopted, there should be at least four per year. In addition, given the history of very limited exercise of the ROFR, it is unclear why the ROFR deadline is the proposed trigger of the deadline for accepting applications. If an application deadline was tied to a date at all, it should be to updates to the map indicating any new served status from

Form 477 filings.

VIII. Conclusion

Frontier looks forward to reviewing the comments of other parties and submitting reply comments to help improve the CASF program to close the Digital Divide in California.

Respectfully submitted,

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