

**BEFORE THE
CALIFORNIA PUBLIC UTILITIES COMMISSION**

Order Instituting Rulemaking to Consider
Modifications to the California Advanced
Services Fund.

Rulemaking No. 12-10-012
(Filed October 25, 2012)

**REPLY COMMENTS OF CALIFORNIA INTERNET, L.P. (U-7326-C) DBA GEOLINKS
ON PHASE II OF THE FEBRUARY 14, 2018 AMENDED SCOPING MEMO AND
ASSIGNED COMMISSIONER'S RULING**

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I. INTRODUCTION

California Internet, L.P. (U-7326-C) dba GeoLinks (“GeoLinks” or the “Company”)¹ respectfully submits these reply comments on the Phase II Staff Proposal set forth in the February 14, 2018 Amended Scoping Memo and Assigned Commissioner’s Ruling (“Ruling”).

II. DISCUSSION

A. The Per Household Threshold for Ministerial Review Should be Technology Neutral

As noted in its Opening Comments, GeoLinks supports Staff’s proposal to create a ministerial review process for certain projects. The Company believes that such a process will reserve Commission resources and encourage more participation in the CASF program. However, commenters agree that the per household cost thresholds Staff proposes for this ministerial review process should be changed. For example, the California Cable and Telecommunications Association (“CCTA”) asserts that these thresholds are not technology neutral, explaining that the thresholds give “fiber-to-the-home a 12-13 times cost advantage over

¹ For more information about fixed-wireless technology and GeoLinks’ Clearfiber™ network, visit <https://geolinks.com/what-is-fixed-wireless-internet>

other technologies.”² The Joint Consumers urge the Commission to “ensure that applicants interested in the expedited process develop cost-effective project plans” after addressing that the \$15,560 figure for fiber is “relatively high.”³ In addition, Frontier objects to the cost-per-household criteria explaining that “[u]se of prior CASF cost per household as a criteria for expedited treatment is not justified, prudent, or pursuant to any legislative direction.”⁴

In its opening comments, GeoLinks urged the Commission to set a flat cost per household threshold for its ministerial review process that would apply to all CASF applicants, regardless of technology type. Some commenters proposed different ideas for these thresholds. Joint Consumers suggest that the Commission develop a cost model equation for estimating fiber costs. Though GeoLinks is not opposed to the creation of a cost model, this proposed solution does not get at the heart of the issue – that different technology types are placed on different footing under Staff’s proposal. Instead, while not specifically proposed in the context of ministerial review, GeoLinks urges the Commission to take note of Frontier’s suggestion to create a review threshold where total project costs are below \$5 million, and/ or cost per-household is below \$3000 (seemingly regardless of technology-type) and apply a similar structure to the ministerial review process.⁵ GeoLinks asserts that regardless of what threshold, methodology, equation, etc. Staff uses for its ministerial review, it must be applied equally to all projects, regardless of technology type.

B. The Commission Should Adopt and Adhere to the Proposed 21-day Challenge Process

Several commenters make suggestions regarding the appropriate process for challenging proposed CASF projects. As an initial matter, GeoLinks believes that the challenge process is important to ensure CASF funds are not spent on projects where there is existing broadband

² CCTA Opening Comments at 9-10, expressing concern that “the criteria for triggering ‘expedited ministerial review’ is not ‘technology neutral’ as required by Pub. Util. Code § 281(f)(1).”

³ The Utility Reform Network, and the Greenlining Institute (“Joint Consumers”) Opening Comments at 2.

⁴ Citizens Telecommunications Company of California Inc., Frontier Communications of the Southwest Inc., and Frontier California Inc. (“Frontier”) Opening Comments at 5.

⁵ GeoLinks supports this flat per-household cost but cautions against the price-per-project cost without additional requirements (perhaps such as minimum households served, or minimum area covered, etc.).

service but asserts that the Commission must strike a balance to ensure adequate time to challenge without creating a challenge process that will cause endless delays to CASF project review. As Race Telecommunications Communications Inc. (“Race”) attests, late challenges cause delays and can result in additional costs to an applicant.⁶ Therefore, GeoLinks supports the proposed 21-calendar day challenge process, but, similar to Race, only if there is strict adherence to it.⁷

GeoLinks urges the Commission to reject other proposed challenge processes and timeframes presented by other commenters that would significantly expand or contract the 21-day proposed process. Joint Consumers, for example, propose “a 45-day challenge window from the date the application” is filed.⁸ While, Joint Consumers assert that 21-days may not be enough time to ensure substantive and meaningful challenges, it fails to provide any examples.⁹ GeoLinks asserts that for carriers who are actively tracking the CASF process and are on the CASF Distribution List, 21-days is sufficient to prepare and submit a challenge. In addition, a 21-day limit ensures no unreasonable delays by a would-be challenger that could ultimately slow down the application process.

On the flip side, AT&T essentially suggests that the project-specific challenge process be eliminated. AT&T urges the Commission to compose a list of eligible census blocks, including which are designated as low-income or high-priority, that carriers can use to prepare CASF applications.¹⁰ However, AT&T suggests that this list be created “each year *before* applications are submitted.”¹¹ This proposal assumes one application period per year and fails to account for the ever-changing broadband landscape in California and for business model differences between larger, incumbent, fiber-based carriers and smaller, more nimble, competitive carriers. First, due to the process for reporting and mapping broadband availability data, the California Broadband map does not change in real-time as availability changes. Second, because smaller, competitive carriers may not be limited by fiber construction requirements, such as fixed-wireless providers,

⁶ Race Opening Comments at 9.

⁷ *See Id.* at 9.

⁸ Joint Consumers Opening Comments at 15.

⁹ *Id.* at 14.

¹⁰ AT&T Opening Comments at 10.

¹¹ *Id.* at 9.

network deployment efforts can happen on a more rapid basis. Limiting the ability to challenge CASF projects to once a year may mean CASF subsidies funding projects in areas where deployment occurs after the list is created (and the initial challenge period has been exhausted). Or, it may have the effect of disincentivizing carriers from deploying their own infrastructure to unserved areas of the state outside of the CASF process. In either event, AT&T's proposed process should be rejected.

GeoLinks urges the Commission to adopt its proposed 21-day process and reject any proposal to expand or contract that challenge window.

C. The Commission Must Ensure the Right of First Refusal Submissions Process Does Not Become a Mechanism for Blocking Competition

As stated in its opening comments, GeoLinks urges the Commission to implement rules to ensure carriers do not use the Right of First Refusal ("ROFR") process to block areas where they have no intention to deploy broadband infrastructure. Several commenters express similar sentiments. Gold Country Broadband Consortium, for example, expresses the importance for the Commission to understand how the ROFR process could be used to block competition, innovation and opportunity.¹² Moreover, similar to GeoLinks' suggestion, some commenters agree that there should be negative consequences for ROFR providers that fail to complete projects in a timely manner.¹³ GeoLinks maintains that the Commission should consider penalties for failure to construct an ROFR area after the initial 180-day period, or any granted extension, such as preclusion from participating in the CASF program.

D. Connect America Fund Recipients Should be Subject to Mandatory Waiting Periods Before Becoming Eligible to Apply for CASF Funding.

As stated in its opening comments, in adopting any rules related to the treatment of Connect America Fund Phase II ("CAF") recipients, GeoLinks urges the Commission to remember that these recipients made commitments to the FCC in exchange for receipt of CAF funds. As an initial matter, GeoLinks agrees with CETF that there should be a waiting period

¹² Gold Country Broadband Consortium Opening Comments at 2.

¹³ California Emerging Technology Fund ("CETF") Opening Comments at 3.

before a CASF Application can be submitted for a CAF area.¹⁴ However, as GeoLinks suggested in its opening comments, this waiting period should apply specifically to the CAF recipient that opted not to complete a CAF build in that area.

As a specific example, GeoLinks cited a notice filed by Frontier in which it informed the Commission that it would not be pursuing a specific CAF area (Desert Shores) and the CASF application for the exact same area that Frontier filed the very next day. In its opening comments, Frontier appears to laud its own actions as an effort to “leverage CAF deployment” and alerts the Commission that it may follow a similar path in other areas, depending on the Commission’s actions on its CASF application.¹⁵

While GeoLinks supports leveraging federal funds to maximize the effectiveness of the CASF program, GeoLinks does not support Frontier’s actions. As GeoLinks noted in its opening comments, Frontier essentially blocked all other broadband providers from being able to seek CASF funding to serve the Desert Shores area – providers that may have proposed a better project for the area than that proposed by Frontier. As such, GeoLinks continues to suggest CAF recipients that relinquish a CAF area be subject to minimum a 90-day mandatory waiting period before a CASF application for that area can be submitted (or longer, depending on when notice is provided).¹⁶

E. The Commission Should Allow More Than One CASF Application Submission Period Each Calendar Year

GeoLinks agrees with other commenters that there should be more than one CASF application deadline per year. In the Proposal, Staff addresses the approval delays that have, to date, been commonplace in the CASF program.¹⁷ Specifically, staff proposes two CASF grant application opportunities each year (every 180 days). GeoLinks supports the notion of more than one application period per year. As Race points out, an annual submission is too rigid and will

¹⁴ *Id.* at 2.

¹⁵ Frontier Opening Comments at 9

¹⁶ See GeoLinks’ Opening Comments at 7.

¹⁷ Ruling, Appendix C. at 13.

result in more delayed broadband service to the public.¹⁸ GeoLinks agrees and urges the Commission to adopt Race’s suggestion to accept CASF applications on a rolling basis, not on a set schedule.¹⁹

At a minimum, GeoLinks urges the Commission to adopt at least two application periods and reject any attempt to reduce the number of application periods. Specifically, GeoLinks urges the Commission to reject AT&T’s suggestion that there should be a single deadline for CASF applications.²⁰ As GeoLinks explained in its opening comments, more application periods will incentivize more service providers to participate in the CASF program. As explained above, because smaller, competitive carriers may not be limited by fiber construction requirement, such as fixed-wireless providers, network deployment efforts can happen on a more rapid basis, meaning that decisions to expand existing infrastructure can happen more quickly. Ignoring these factors when finalizing rules for the CASF program could ultimately disincentivize competitive carriers from applying at all. As the Commission seeks to incentivize more participation in the CASF program, GeoLinks believes that ensuring multiple opportunities to submit CASF applications will help further this goal and encourages the Commission to adopt rules accordingly.

F. Higher Proposed Speeds Should be Given More Weight as a Scoring Criteria

GeoLinks echoes the disappointment of other commenters regarding the changes to speed thresholds set forth in AB 1665.²¹ Therefore, the Commission must do something to ensure that unserved areas of California do not fall too far behind the national standard of 25 Mbps / 3 Mbps implemented by the FCC.

The Commission should reject outright AT&T’s assertion that because 10/1 “is a mandatory prerequisite for any application, the Commission should eliminate the points that Staff proposes

¹⁸ Race Opening Comments at 8.

¹⁹ *Id.* at 8.

²⁰ *See* AT&T at 19 and at FN 12.

²¹ *See e.g.* Race Communications at 4, California Center for Rural Policy, Rural County Representatives of California, Upstate California Connect Consortium and the Northeastern California Connect Consortium at 6, North Bay North Coast Broadband Consortium at 5.

to allocate for bandwidth speed.”²² This “good enough” approach does nothing to future-proof network design to ensure adequate speed and capacity for years to come and runs contrary to the goals of the CASF program.²³ Instead, GeoLinks strongly agrees with Race that applications with faster speeds should be scored higher than those that propose slower speeds.²⁴

III. CONCLUSION

Based on the foregoing, GeoLinks urges the Commission to adopt changes that ensure technology neutral administration of the CASF program, incentives for participation, promote robust, “future proof” CASF projects, and prevent gaming of the program to block competition.

Respectfully submitted,

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²² AT&T Opening Comments at 22.

²³ See Joint Consumers Opening Comments at 11, suggesting that the Commission look to more factors than cost when assessing scoring criteria.

²⁴ Race Opening Comments at 5.