

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

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

R. 12-10-012
(Filed October 25, 2012)

**REPLY COMMENTS OF THE GREENLINING INSTITUTE ON THE PROPOSED
DECISION IMPLEMENTING THE CASF INFRASTRUCTURE ACCOUNT REVISED
RULES**

Vinhcent Le, Legal Counsel
The Greenlining Institute
360 14th Street, 2nd Floor
Oakland, CA 94612
(510) 898-2053
vinhcentl@greenlining.org

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I. INTRODUCTION

Pursuant to Rule 14.3 of the Commission’s Rules of Practice and Procedure, The Greenlining Institute respectfully submit these reply comments on the Proposed Decision of Commissioner Guzman Aceves (“PD”). In addition to the comments below, Greenlining supports TURN’s reply comments on the PD.

II. REQUIRING VALIDATED AVAILABILITY DATA IS A PROPER METHOD FOR DETERMINING CASF ELIGIBILITY

In opening comments, some parties took issue with the PD’s proposal to verify whether a provider offers access to broadband service at speeds of at least 6 megabits per second (mbps) downstream and one mbps upstream by requiring subscriber data.¹ Parties argue that the Commission has no legal authority to require subscriber data; and that conflating adoption and access creates a risk of overbuilding in areas where service is available but customers have not chosen to subscribe. As discussed further below, these arguments misconstrue the statute and the Commission’s authority while also failing to address the persistent problem of carrier misrepresentations regarding coverage.

A. The Commission has Legal Authority to Validate Carrier Offerings to Determine CASF Eligibility

AT&T and other parties claim the Commission has no authority to require proof that a carrier actually offers broadband in an area it claims to, at the speed it claims to offer.² Public Utilities Code § 281(f)(5)(A) states that eligible census blocks are those where no provider offers access at speeds of at least 6 mbps downstream and one mbps upstream. However, Public Utilities Code § 281 is silent as to the method the Commission should use to determine whether a provider offers access. The statute, does however, state the Commission will be responsible for,

¹ Proposed Decision at p. 12; CCTA Opening Comments at pp. 1-3; Frontier Opening Comments at pp. 1,7; AT&T Opening Comments at pp. 1-2; Small LECs Opening Comments at pp. 2-4.

² AT&T Opening Comments at p. 1; CCTA Opening Comments at p. 1; Frontier Opening Comments at p. 7; Small LECs Opening Comments at p. 2.

identifying unserved areas,³ achieving the program goals⁴ and implementing and administering the CASF program in a way that encourages deployment of communication services to *all* Californians.⁵ This statutory power, in concert with inaccurate provider availability claims, discussed below, provides ample legal justification for requiring proof that validates whether a carrier truly offers 6/1 mbps service in a particular area. Requiring more reliable data does not conflate availability and subscribership, as claimed by AT&T.⁶

Finally, CCTA claims State and Federal privacy requirements prevents carriers from validating service offerings with subscriber data.⁷ It is unclear how the California Consumer Privacy Act would prohibit this practice. The act gives consumers the right to know more about how their data is used but does not prohibit carriers from using consumer data to comply with legal obligations.⁸ Similarly, 47 U.S.C. § 222 requires telecommunication carriers to protect customer data but specifically carves out exceptions for legally required data disclosures,⁹ and disclosures are allowed to protect the rights and property of the carrier.¹⁰ In the instant case, disclosure is necessary to protect carrier's right to block CASF deployments in areas that already have service. If the Commission chooses not to require address level subscriber data, it should, at a minimum, require providers to submit CalSPEED test results in each census block where it does not have validated subscriber information to ensure the validity of carrier claims about availability and deployment.

B. Inaccurate Provider Deployment Data Justifies Validating Provider Offerings

Some parties asked the Commission to continue to rely on FCC 477 deployment data to determine whether an area is served and opposed validating broadband availability with

³ Pub Util. Code § 914.7(a)(1).

⁴ Pub. Util. Code § 281(b)(1)(A).

⁵ Section 2 of the Internet for All Now Act.

⁶ AT&T Opening Comments at p. 1-2.

⁷ CCTA Opening Comments at p. 3.

⁸ https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB375

⁹ 47 U.S.C. § 222(c)(1).

¹⁰ 47 U.S.C. § 222(d)(2).

subscriber data.¹¹ However, these parties failed to address the issues in the record that provide impetus for moving away from relying solely on provider claims to determine availability, namely the fact that “the deployment data submitted by providers overstates broadband availability, and that the submitted data is inaccurate in other ways.”¹² This inaccurate data can incorrectly render a census block ineligible for CASF funds, potentially eliminating any possibility that homes in that block will ever receive broadband. Therefore, given the Commission’s mandate to implement the program in a way that encourages deployment of communication services to *all* Californians,¹³ requiring proof that a subscriber can receive service at 6/1 mbps speeds is proper in the face of inaccurate provider deployment claims.

C. The Commission’s Challenge Process Should Require Proof of 6/1 Mbps Speed Where Providers Cannot Validate Claimed Service Offerings.

Several parties erroneously claim that requiring subscriber data to validate provider offerings is impermissible because this requirement may lead to overbuilds where a customer chooses not to subscribe to 6/1 mbps service even though it is available.¹⁴ The PD anticipates this possibility and correctly states that “concerns that using subscriber data to validate the level of broadband deployment may lead to overbuilding of networks may be addressed as part of the challenge process.”¹⁵ Greenlining supports this approach because it provides carriers with the opportunity to prove that they offer service even in areas where there are no subscribers and ensures compliance with Public Utilities Code § 281(f)(5)(A) which focuses on the availability of 6/1 mbps service offerings in determining eligibility. However, consistent with Joint Consumer’s previous comments and the record of inaccurate provider deployment claims, this challenge must go beyond a mere attestation that 6/1 mbps is available and must also include CalSPEED test

¹¹ Frontier Opening Comments at p. 2.

¹² Proposed Decision at p. 12. *See also* Joint Consumers Opening Comments to July 11, 2018 ACR at p. 2 (focusing on note 5 which provides ground truth testing results that conflict with Provider 477 claims); CCBC Phase II Reply Comments, May 1, 2018 at p. 3; CETF Phase II Opening Comments April 2018 at p. 9.

¹³ Section 2 of the Internet for All Now Act.

¹⁴ *See e.g.* AT&T Opening Comments at p. 2; Small LECs Opening Comments at p. 3.

¹⁵ Proposed Decision at p. 12.

results to show that the provider offering is capable of providing statutorily required speeds.¹⁶ In addition, the Commission should adopt Race Communications’ recommendation and remind providers that providing erroneous data on coverage is a Rule 1.1 violation and should be treated as such.¹⁷

III. A CASF PROVIDER SHOULD SERVE EVERY HOUSEHOLD IN EVERY CENSUS BLOCK IN EACH OF ITS PROJECT AREA

CCTA attempts to draw a distinction, based on strained legislative interpretation to suggest that CASF projects need not serve every household in a project area.¹⁸ CCTA argues that the Legislature’s use of the term “delineated” in the context of a Right of First Refusal (ROFR) means a CASF project can chose to serve a project area that is more granularly defined than by census blocks. Yet, the statute does not define “delineated” as having a special meaning and uses the term sparingly.¹⁹

While providers have access to address-level granular data, the Legislature is aware that the most granular data available to the Commission is census block level data.²⁰ Existing providers²¹ may use their address-level data to inform their decisions whether to invoke their

¹⁶ Joint Consumers Opening Comments to July 11 2018 ACR at pp. 2, 5.

¹⁷ Race Communications Opening Comments at p. 2.

¹⁸ CCTA Opening Comments on the Proposed Decision at p. 9.

¹⁹ English Oxford Dictionary, “delineate,” retrieved from <https://en.oxforddictionaries.com/definition/delineate> (last viewed December 4, 2018).

²⁰ Pub. Util. Code sec. 281(f)(3) (“The commission shall identify unserved rural and urban areas and delineate the area [referring to the identified unserved rural and urban areas] in the annual report prepared pursuant to Section 914.7”) and 914.7(a)(1). Census block data is the most granular data included in the Commission’s annual report to the Legislature, therefore it is reasonable to infer that the Legislature has notice that census block data was the most granular data available to the Commission. *See, e.g.*, California Public Utilities Commission, DIVCA Video, Broadband and Video Employment Report for the Year Ending December 31, 2016 (dated June 8, 2018), retrieved from http://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/About_Us/Organization/Divisions/Office_of_Governmental_Affairs/Legislation/2018/DIVCA%20Final%20Report%20June%208%202018a.pdf (last viewed December 4, 2018).

²¹ CCTA cites no authority to support its argument that an “existing providers” need not already provide service in every census block where it seeks to issues a ROFR. CCTA Opening Comments on the PD at p. 10. CCTA states that a ROFR is valid in census blocks that are partially served. CCTA Opening Comments on the Proposed Decision at p. 9. CCTA’s interpretation is contrary to the Pub. Util. Code and Resolution T-17590. Pub. Util. Code sec. 281(f)(5)(A) is clear that a census block that is partially served – at least one household receives speeds of 6/1 Mbps – is considered fully served and is ineligible for any CASF funding. Therefore, a ROFR is invalid for a census block that is partially served. Moreover, Resolution T-17590 explicitly states that a ROFR is only available to a provider for the unserved areas *of its existing territory*. Resolution T-17590, FOF 1. Again, the most granular data available to

ROFR and deploy or upgrade to households within a census block. Nevertheless, the most granularly the Commission can address the ROFRs is by census blocks. If the existing provider plans to deploy or upgrade to one household in a census block, that *entire* census block becomes ineligible for CASF funding while the ROFR is in place and after at least one household in the census block is served.

The statute is silent as to whether a ROFR or a CASF project area must deploy to every household in each census blocks, or whether a project area can deploy only to select households in each census blocks. The statute is not silent in its delegation of authority to the Commission to determine the CASF program rules to fund CASF projects.²² Therefore, it is a reasonable interpretation of the statute to find that it is within the Commission's authority to require that CASF projects must deploy to every household in every census block in each project area to further the CASF Program goal of reaching 98% broadband availability throughout the state, and the Commission should require this as written in the PD.²³

IV. CONCLUSION

For the reasons set forth above, The Greenlining Institute requests that the PD be modified in accordance with our recommendations here.

Dated: December 4, 2018

/s/ Vinhcent Le

Vinhcent Le, Legal Counsel
The Greenlining Institute
360 14th Street, 2nd Floor
Oakland, CA 94612
(510) 898-2053
vinhcentl@greenlining.org

the Commission is by census block. Therefore, a ROFR is only available to a provider who currently offers service of less than 6/1 Mbps in a census block where the *entire* census block receives less than 6/1 Mbps.

²² Pub Util. Code § 281(a).

²³ Proposed Decision Appendix A at p. 10.