

**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)

**OPENING COMMENTS OF THE UTILITY REFORM NETWORK, AND THE
GREENLINING INSTITUTE ON PHASE II OF THE FEBRUARY 14, 2018 AMENDED
SCOPING MEMO AND ASSIGNED COMMISSIONER'S RULING**

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I. INTRODUCTION

Pursuant to the February 14, 2018, Amended Scoping Memo and Assigned Commissioners' Ruling, The Utility Reform Network ("TURN") and the Greenlining Institute ("Joint Consumers") respectfully submit these opening comments on Phase II of the Staff Proposal.

II. DISCUSSION

A. The Commission Should Use More Detailed Cost Benchmarks in the Proposed Expedited Ministerial Review Process.

Staff proposes to create an expedited ministerial review process to speed up approval of non-controversial projects in low-income areas.¹ To qualify, these projects must meet three criteria, (1) the applicant is eligible, (2) the cost per household is below the CASF program average, and (3) the project serves low-income areas.² Joint Consumers support Commission efforts to speed up broadband deployment efforts and increase the number of CASF applications in low-income areas. However, the Commission should ensure that this process provides incentives for applicants to minimize costs. The Commission can accomplish this by using more granular cost per household benchmarks for eligibility in the expedited review process.

Staff's proposal would make projects that have costs below the CASF program average eligible for the expedited ministerial review process. The proposed average cost per household benchmarks for eligibility are:

- \$1,212 per household or less for projects that upgrade existing infrastructure;
- \$15,650 per household or less for projects that connect new fiber to the home;

¹ Amended Scoping Memo, February 14, 2018, Appendix C at pp. 13-14.

² *Id.*

- \$1,285 per household or less for projects that use fixed wireless.³

The cost per household for CASF fiber builds, \$15,560, is relatively high. Verizon estimated that the cost to connect a household to fiber is approximately \$700,⁴ other figures pegged the cost per household at \$3,200.⁵ CenturyLink told investors that fiber to the premises cost from \$500-800 per household.⁶ Analyses of rural fiber builds show that customer density is a major cost component for rural areas where lower population density increases the cost per household to approximately \$9,286 compared to \$4,438 in higher density rural areas.⁷ Analysis of European prices shows the cost per home passed is 150-540 EUR (\$180-\$650) in urban areas and 2700 EUR (\$3,330) in rural areas.⁸ The wide range of costs is likely due to a combination of factors such as labor, ISP ownership of the rights of way, and customer density. Looking at the approved CASF fiber projects, costs range from \$10,656 (Gigafy Backus) to \$23,977 (Gigafy Occidental), higher than estimates from other private fiber builders.⁹

Joint Consumers recognize that the use of prevailing wages in California increases the cost of CASF builds;¹⁰ however, even accounting for these higher wages, the Commission should ensure that applicants interested in the expedited process develop cost-effective project plans – especially if the applicant is requesting that the project will be fully funded by CASF.

³ *Id.*

⁴ CSMG, *FTTH Deployment Assessment*, CSMG Global at p. 4 (2009).

⁵ Terrence P. McGarty, *Fiber to the Home: Capital Costs and the Viability of Verizon's FIOS*, The Telmarc Group at p. 5 (2006).

⁶ Sean Buckley, “CenturyLink: FTTP Deployment Costs from \$500-800 per home,” FierceTelecom (Aug. 17, 2016) available at <https://www.fiercetelecom.com/telecom/centurylink-fttp-deployment-costs-range-from-500-800-per-home> (last visited April 16, 2018).

⁷ See Masha Zager, *Modeling the Cost of Rural Fiber Deployment*, Broadband Properties at p. 107 (2011).

⁸ The Broadband Commission, *The State of Broadband 2014: Broadband for All*, ITU at p. 74 (2014).

⁹ Supporting Materials for May 25 Communications Division Staff Workshop on CASF Reform (May 17, 2017) at p. 75.

¹⁰ *Id.* at p. 5.

Therefore, the Commission should develop more appropriate, meaningful, and targeted cost benchmarks. Geographically tailored benchmarks would ensure that projects in areas with challenging terrain or other characteristics that increase costs can still qualify for the expedited review process, while also ensuring that the costs for projects in higher-density or less challenging areas reflect that it may be cheaper to build in those areas. One solution would be to develop and use a simple cost modeling equation that considers the factors affecting broadband deployment costs. For example, one engineering firm developed the following model for the FCC to use to estimate costs for rural fiber deployment:

$$\begin{aligned} \text{Cost per household} = & \$3,072 + \$13,365 * (\text{adjusted road miles/ households}) - \\ & 0.8867 * \text{households} + \$25.04 * \text{frost index} + \$17,700 * \text{wetlands percentage} \\ & + \$1,376 * \text{soils texture} + \$165.40 * \text{road intersection frequency}.^{11} \end{aligned}$$

The Commission should explore creating a model that considers California specific factors. Joint Consumers suggest the Commission hold a specific workshop or solicit comments on proposed cost modeling equations. Developing a model for acceptable fiber deployment costs could also be useful to Staff in evaluating Request for Proposals (RFPs) for high-priority areas.¹² Another possibility would be to group CASF projects into geographic categories or population densities and average those costs instead of averaging across all projects. Either solution helps to ensure that the proposed expedited review process is designed in a way that is cost effective and protects CASF integrity.

B. Request for Proposals (RFPs) Processes in High Priority Areas Require Clarification and Should be Flexible, Iterative and Locally-Driven.

¹¹ Masha Zager, *Modeling the Cost of Rural Fiber Deployment*, Broadband Properties at p. 108 (2011).

¹² Appendix C at pp. 14-15.

Staff seeks comment on a proposed RFP process to drive applicants to “high-priority” areas where, historically, there have been no CASF applications.¹³ Joint Consumers support a more proactive approach to broadband deployment, but urge the Commission to provide clarification on “high-priority” areas, design a transparent process with opportunities for public comment, and to mimic the locality-centric model established in Massachusetts rather than the proposed framework which is heavily Commission driven.

1. The Commission Should Provide Clarification on “High-Priority” Areas.

The Staff proposal states that “high-priority” areas are “deemed by the Commission in an order that it should receive a broadband CASF grant with preference given to projects having low-income census tracts.”¹⁴ While Joint Consumers support this concept, the proposal should clarify the process to identify the “high priority” areas and how, if at all, a Commission-designated “high-priority” area relates to a “priority” area identified in T-17443 Appendix 4¹⁵ or a “high-impact” area identified by Staff in its February 2017 whitepaper.¹⁶ Joint Consumers ask the Commission to clarify the criteria for high-priority areas, explain why this criteria may differ from criteria used by the Commission previously to identify funding priorities for the Fund, and how the selection process and Commission order will identify a high priority area and provide for an opportunity for input and comment. Joint Consumers urge the Commission to consider these important elements for identifying high-priority areas: the number of low-income and vulnerable households in the project area, slow broadband speeds, higher household density,

¹³ *Id.*

¹⁴ Appendix C at p. 7.

¹⁵ See Resolution T-17443 Implementation of New Timelines for California Advanced Services Fund Applicants, (2014).

¹⁶ High Impact Areas for Broadband Availability, Staff White Paper (February 2017).

economic and social impact (metrics for this could include number of anchor institutions or the number of school-age children that could benefit etc.) and the number of unserved households.

2. **The RFP Process Should Adopt a Flexible, Iterative, Community-Centric Model.**

The Commission asks how the RFP process could differ from the existing application process to provide a benefit. In the spirit of having a more proactive model, the Commission should design the process to allow for greater involvement of the potential communities. The Massachusetts model cited by the Commission¹⁷ provides significant opportunity for input by localities and towns. For example, the Flexible Grant Proposal (FGP) application process notes that the Massachusetts Broadband Institute (“MBI”) would provide technical guidance and support, but in evaluating the applications there will be significant deference to local judgments about the most appropriate solution for that community’s long-term needs.¹⁸

In contrast, the model proposed by the Commission lacks any significant opportunity for local input into the RFP process. We recognize that working with more stakeholders can add complexity to the process but, in exchange, local partners can be effective in finding and recruiting applicants. Prior proposals for CASF reform indicated that there are not enough applicants to the program.¹⁹ Shifting some responsibility to towns to recruit and evaluate applicants for CASF funds reduces the burden on Staff and could result in more applications. In

¹⁷ Appendix C at p. 14.

¹⁸ Massachusetts Technology Collaborative, *Flexible Grant Program Notice Of Funding Availability For Innovative Approaches To Provide Broadband Service To Unserved Towns In Western Massachusetts*, NOFA No. 2018-MBI-01, Massachusetts Broadband Institute at p. 2 (2018), available at <http://masstech.org/sites/mtc/files/documents/Legal/2018-MBI-01/Flexible%20Grant%20Program%20NOFA%20MBI-2018-01%20%28FINAL%29.pdf>.

¹⁹ See e.g. Supporting Materials for May 25 Workshop at pp. 9, 69 (finding that there has only been one competing application in CASF’s history and that are not enough applicants under the current CASF program for a reverse auction).

addition, locally-driven efforts could better identify the needs of the local community thereby boosting adoption and subscriptions once the project is complete.

Local government agencies are eligible for CASF funding where no other eligible entities apply²⁰ and the RFP process targets areas where “no applications have been received.”²¹ Staff could work with these communities to find broadband projects that meet their needs. This could result in lower prices, cheaper builds and more efficient use of existing infrastructure. For example, Ammon, Idaho built a fiber network for \$1 million that is owned by the city but operated by private ISPs that lease excess fiber capacity. The network was built to serve Ammon’s over 13,000 residents, it saves the city \$70,000 a year compared to private builds, and retail prices for 100 Mbps services start at \$10 a month.²² Ammon’s model relies on property taxes and local improve district assessments to finance network expansion.²³ This type of local involvement is not prioritized under current CASF program, but a more flexible RFP process could enable small towns with limited connectivity and no private interest to get these types of projects off the ground.

The Commission asks how the RFP process could provide additional incentives for applicants.²⁴ A more flexible, iterative grant model could provide that incentive. For example, Massachusetts’ FGP program received interest from Comcast, who does not typically participate

²⁰ Appendix C @ 7.

²¹ Appendix C @ 14.

²² See Leerssen, Paddy and David A. Talbot. *Enabling Competition & Innovation on a City Fiber Network*. Berkman Klein Center for Internet & Society Research Paper at pp. 6-7 (2017), available at <https://dash.harvard.edu/bitstream/handle/1/33981014/Ammon.final2.pdf?sequence=1>

²³ *Id.*

²⁴ Appendix C at p. 5.

in the CASF program.²⁵ In its expression of interest, Comcast requested to work with the community to first understand which anchor institutions would be connected, business needs in the community, and pole access issues in order to refine its proposal to provide broadband in underserved communities. Other applicants for FGP funds offered to build a fiber network that the town could then purchase, if the town committed to providing incentives such as right of way access on utility poles, police details during construction etc.²⁶ The current CASF program does not incentivize providers to work closely with localities. A flexible, locally driven RFP process could give providers greater certainty regarding the financial viability of a project while driving down costs through greater coordination with localities that typically control rights of way and the permitting process.

If the Commission adopts a flexible, iterative, and locally-driven RFP model, it would be following the lead of countries like Sweden that emphasize local input in developing broadband networks. Sweden consistently leads the world in broadband access²⁷ and its national broadband plan emphasizes the role of municipalities in creating cooperation between network operators and land owners, issuing permits and choosing which type of broadband model (i.e. municipally operated or privately operated) that will work in their area.²⁸ However, these municipalities are supported by national agencies with more experience in this decision making process to ensure

²⁵ See Comcast Letter Re: NOFA No. 2018-MBI-01, available at https://broadband.masstech.org/sites/mbi/files/documents/flexible-grant-proposals/2018-MBI-01_ResponseToNOFA_Comcast_01-12-2018.pdf (last visited April 16, 2016).

²⁶ See Matrix Design Group Letter Re: NOFA No. 2018-MBI-01, available at https://broadband.masstech.org/sites/mbi/files/documents/flexible-grant-proposals/2018-MBI-01_ResponseToNOFA_Matrix_Blandford_11-14-2017.pdf (last visited April 16, 2018).

²⁷ Sweden has 99% availability of fixed broadband. See European Commission, *Europe's Digital Progress Report (EDPR) 2017 Country Profile – Sweden*, (2017) available at http://ec.europa.eu/newsroom/document.cfm?doc_id=44339.

²⁸ Swedish Ministry of Enterprise and Innovation, *A Completely Connected Sweden by 2025 – a Broadband Strategy*, at pp. 38-39 (2017).

that broadband infrastructure is procured in an “effective, coordinated and competitively neutral way.”²⁹ As it relates to the RFP process, the PUC and the Consortia could provide localities with the guidance needed to design and provide input on the best project for their community.

C. The RFP and Expedited Review Processes Need Clarification

As discussed above, Staff proposals to create RFP and Expedited Review processes have potential to encourage and facilitate broadband deployment in some of the hardest to reach places. However, Joint Consumers urge the Commission not to sacrifice its duties to protect ratepayer interests in the name of expediency and simplicity. These processes should be transparent and subject to meaningful challenge. As drafted, neither process clearly sets out opportunities for interested parties to receive these applications, conduct a meaningful review, and possibly challenge the applications. The Staff’s goal should be not only to create a streamlined and efficient expedited or RFP process, but also to provide for input from stakeholders, especially, as discussed above, input from community stakeholders in the RFP process.

Moreover, the Staff proposal should better define the expedited review criteria. The proposal requires that “the project serves low-income areas.”³⁰ The Commission should clarify whether the entire service area proposed for buildout must be considered low income, or if a project application could qualify for expedited treatment if just a single census block covered by the project fits the low income definition. Joint Consumers are not advocating that the entire service area qualify as low income because such a strict implementation requirement would be unduly narrow and eliminate candidates that could benefit from expedited review of their

²⁹ *Id.* at pp. 20, 25.

³⁰ Appendix C at p. 14 (Section 1.7).

applications. However, the rules for expedited review should better define the criteria to include a percentage or other benchmark of the relative amount of low income areas each application should have. Also, the Staff proposal does not specify any changes to the documentation requirements for applicants seeking to qualify under the expedited review process, but Joint Consumers note that the May 25 Workshop Materials proposed that only new applicants should submit financial documentation for review.³¹ Joint Consumers support narrowing the documentation requirement for expedited applications, but only to a point. The Staff Proposal should provide additional description of this process before Joint Consumers can support a proposal for the Commission to delegate authority to approve these projects

D. Scoring Proposal

The Staff proposes a revised Scoring Criteria to give greater weight to projects that bring benefits to low income communities.³² However, the proposal notes that the scoring criteria is most useful only when comparing projects that have overlapping areas.³³ The May 25 Workshop Materials also discusses the limitations of the scoring criteria and the flaws in the review and approval process that allow certain projects to improperly leapfrog over other, potentially higher quality projects.³⁴ The May 25 Workshop Materials suggested a “first come, first serve” process that Joint Consumers would not support. The current Staff proposal states that there are “several ranking processes” but does not appear to choose a specific process except to suggest that when projects do not overlap they will each be recommended for approval if they each meet the program requirements.³⁵ The use of scoring criteria could be a helpful and fair way to evaluate

³¹ May 25 Workshop Materials at p. 29.

³² Appendix C at p. 18.

³³ *Id.*

³⁴ May 25 Workshop Materials at p. 9.

³⁵ Appendix C at p. 18.

proposed projects if the criteria are clearly defined and fairly applied. Joint Consumers urge Staff to further clarify their recommendation for the use of scoring criteria to address concerns discussed in the May 25 Workshop Materials.

In this current proposal, Staff recommends adding more points to the Low-Income category for scoring CASF projects. Joint Consumers support this in light of the CASF program goals and the significant digital divide in California that disproportionately affects low-income communities. In that vein we also support the \$100 million set aside proposed by the Commission for low-income communities. However, as discussed above in the context of the criteria for the expedited review process, the Staff proposal must clarify its intent to set-aside money that will be used “to benefit low income communities through all forms of applications.”³⁶ Certainly Joint Consumers support the use of ratepayer surcharge revenue to benefit low income communities with robust broadband infrastructure and services. Yet, to ensure low income communities receive meaningful benefits from this set aside, the rules should outline, and the applicants should clearly describe, the types of “benefits” that would come with the proposed project beyond increased broadband access, including favorable pricing, partnerships, social services, community centers and other benefits. The 2017 State Controllers’ Audit calls out the fact that previous criteria regarding “substantial social benefits” were lacking because there was no definition or criteria for the term “substantial.”³⁷ The Audit concludes that this lack of specific criteria means the level of compliance is “indeterminable.” Therefore, Joint Consumers propose that the Commission provide additional description of the intended benefits for low income consumers in CASF.

³⁶ Appendix C at p. 5.

³⁷ March 2017 Audit p. 10

Joint Consumers question why the scoring criteria still prioritizes the “funds per customer” element in the weighting analysis. While it is critical that the Fund supports cost efficient projects, making a funds-per- customer review appropriate, it is short sighted to weigh this criteria three times higher than the low-income and pricing criteria and double the financial viability criteria. Some projects may have a higher cost-per-customer, but provide significantly more benefits to low income areas, better speeds, and a “future proof” network design to justify the increased costs despite the fact that these costs would, presumably result in fewer points for that criteria.

Joint Consumers recommend that Staff balance the criteria and move ten points from Funds per customer to low income, or distribute these points between low income and pricing, to ensure that these other criteria are given proper consideration in the staff analysis. Further, Staff should clarify how it will weigh the “speed” criteria if the speeds are variable in different geographic areas covered by the project or guarantees different speeds based on a higher monthly subscription.

Presumably the scoring criteria for “pricing” references the pricing commitments that applicants must agree to provide for a period of two years following the completion of the project, including waiver of the nonrecurring installation charge for new customers.³⁸ These pricing commitments will be critical to bringing the benefits of the CASF to low income customers. Joint Consumers recognize that the Staff originally proposed eliminating these two-year pricing requirements.³⁹ Nevertheless, Joint Consumers urge Staff not only to require stability in rates for a period of two years but to provide a low income discounted rate for a basic

³⁸ Appendix C at p. 12 (Proposed Application Item 10).

³⁹ May 25 Workshop Materials at p. 3.

broadband service. Indeed, Joint Consumers urge the Commission to make such low income discount programs, including waiver of nonrecurring fees, mandatory for at least five years following project completion for each project receiving CASF funding. If the project includes a voice offering, Joint Consumers urge the Commission to require discounts for low income households on the voice services as well.

E. Other Elements of the Staff Proposal Must be Clarified

1. Clarification of Next Steps and Incorporation of the Formal Rules

Joint Consumers request clarification regarding the format and structure of the Staff Proposal and the intent and goals for the adopted rules. The program rules contained in the Appendix attached to the 2014 Decision contain more detailed descriptions and explanation of the application process, eligibility and scoring criteria. As Joint Consumers review the Staff proposal, we are assuming that the current rules will have to be amended to incorporate the adopted elements of the Staff proposal, but that much of the current rules will remain. Joint Consumers request clarification from Staff on this point and, in general, on the next steps for this proposal.

2. Performance Bond

Joint Consumers do not support the Staff proposal to provide “relief” to all applicants from the performance bond requirement.⁴⁰ The Staff proposal cites to concerns raised by the carriers that claim the performance bond requirement is burdensome and unnecessary. Joint Consumers are sympathetic to the additional administrative burdens on both carriers and staff from a performance bond requirement. However, Joint Consumers disagree with staff that in the

⁴⁰ Appendix C at p. 11.

“interest of promoting the deployment of broadband infrastructure some risk of default may need to be accepted.”⁴¹ While a “risk of default” may be reasonable in certain high-risk investments of private capital, that is not the situation here. Applicants are requesting grants of money provided by California ratepayers through surcharge payments. In general, these consumers have had no input into how this money is spent or even whether to pay into the surcharge fund that supports this program. Ratepayers should not accept a risk of default. Indeed, the May 2017 Audit noted that participants in the program are not contractually obligated to perform under the terms adopted by the Commission its unilateral resolution and recommended that the Commission create a contractual arrangement to ensure enforcement authority of agreed upon terms.⁴² While the Staff proposal includes a new process to get “consent” from the participant to the terms of the adopted resolution, without the contractual obligation the Commission’s enforcement options and remedies may be limited and a performance bond is a valuable tool to protect ratepayer money.

Therefore, Joint Consumers respectfully suggest that the CASF program rules should guard against default and other potential threats to the program, by requiring a performance bond. However, acknowledging that to date there has not been wide spread problems with the program, Joint Consumers suggest that this requirement does not need to apply across the board, and instead, could apply only to a subset of specifically-identified types of applicants. Perhaps the Commission could narrow the performance bond requirement to those applicants without a CPCN or without a financial and operational track record, or other characteristics that make it

⁴¹ Appendix C at p. 11.

⁴² May 2017 State Controller Audit at p. 21.

more difficult to predict whether the applicant is a risk for default or poses other threats to program integrity and consumer protection.

3. Challenge Process

The Staff proposal incorporates the statutory requirement that the Commission give any party challenging an application the opportunity “to demonstrate actual levels of broadband service in the project area” differ from applicant’s description.⁴³ However, the Staff proposal does not discuss other possible basis for challenges to a CASF application. It is unacceptable, and not supported by the language or intent of the statute, to limit the challenge process solely to the level of broadband service in a proposed project’s service area. There are millions of dollars at stake through this Fund and, as stewards of ratepayer money, it is critical that the Commission create an application and review process that is fully transparent and well-supported. If the challenge process is unduly limited to fights over broadband deployment data, the Commission will miss out on the opportunity to use timely, relevant and substantive challenges to CASF applications to inform the record and weigh all considerations for these projects.

Second, the Joint Consumers propose allowing challenges up to 45 days from approval of the resolution or equivalent approval process for other CASF applications. Currently there is only a 14-day window to submit a challenge and the Staff proposal extends this window to 21 days. But 21 days may not be enough to ensure substantive and meaningful challenges, even if the challenge is limited to broadband deployment levels. Staff previously recommended a 45 day period to conform its processes with the FCC’s Connect America Fund program and to

⁴³ Appendix C at p. 17 (Section 1.13), Pub. Util. Code §281(f)(8)

acknowledge that currently challenges are often filed late thereby prejudicing the applicant.⁴⁴

Joint Consumers propose a 45 challenge window from the date the application was filed.

F. Consortia Action and Work Plan Requirements Should Include an Optional Adoption Component.

AB 1665 revised the objective of the Rural and Urban Regional Broadband Consortia, this new objective is to facilitate deployment of broadband services by assisting infrastructure applicants in the project development or grant application process.⁴⁵ Staff responded by making action and work plan requirements focus on identifying priority areas, assisting applicants and finding cost-effective solutions in Consortia regions.⁴⁶ The new Action and Work Plan requirements removes reference to broadband adoption activities,⁴⁷ a shift from previous rules directing Consortia applicants to promote adoption efforts.⁴⁸ While the new adoption account is the appropriate avenue for adoption programs, Consortia that do not apply for adoption grant funds can also play an indirect, albeit important role in regional adoption efforts that may not otherwise be funded under the Broadband Adoption Account. For example, Consortia could be instrumental in advising or recruiting applicants for broadband adoption grants, or they can work to promote local government efforts to implement pro-adoption policies. Consortia members typically involve community organizations and local government officials, so they are well positioned for this type of work. However, under the Broadband Adoption Account guidelines, these are not traditional digital literacy or broadband access projects and may not be eligible for Adoption Account funding. Therefore, the Commission should include an optional adoption

⁴⁴ May 25 Workshop Materials at p. 6.

⁴⁵ Appendix C at p. 40.

⁴⁶ Appendix C at p. 43.

⁴⁷ Appendix C at p. 54 (Attachment 3.A).

⁴⁸ R.10-12-008, Decision Implementing Broadband Consortia Grant, Attachment A (Issued June 28, 2011).

component in the Consortia work/action plan guidelines. One possible metric for this adoption component could be the number of Adoption Account grants or applications, associated with Consortia efforts, that were received in a Consortia region.

III. CONCLUSION

For the reasons set forth above, Joint Consumers request that the Staff Proposal be modified in accordance with our recommendations here.

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