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**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

- CALAVERAS TELEPHONE COMPANY (U 1004 C)**
- CAL-ORE TELEPHONE CO. (U 1006 C)**
- DUCOR TELEPHONE COMPANY (U 1007 C)**
- FORESTHILL TELEPHONE CO. (U 1009 C)**
- HAPPY VALLEY TELEPHONE COMPANY (U 1010 C)**
- HORNITOS TELEPHONE COMPANY (U 1011 C)**
- KERMAN TELEPHONE CO. (U 1012 C)**
- PINNACLES TELEPHONE CO. (U 1013 C)**
- THE PONDEROSA TELEPHONE CO. (U 1014 C)**
- SIERRA TELEPHONE COMPANY, INC. (U 1016 C)**
- THE SISKIYOU TELEPHONE COMPANY (U 1017 C)**
- VOLCANO TELEPHONE COMPANY (U 1019 C)**
- WINTERHAVEN TELEPHONE COMPANY (U 1021 C)**
- (the "SMALL LECs")**

**ON PROPOSED DECISION IMPLEMENTING THE CALIFORNIA ADVANCED
SERVICES FUND INFRASTRUCTURE GRANT ACCOUNT PROVISION**

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1 **I. INTRODUCTION.**

2 Pursuant to Rule 14.3(d) of the California Public Utilities Commission’s (“Commission”)
3 Rules of Practice and Procedure (“Rules”), Calaveras Telephone Company (U 1004 C), Cal-Ore
4 Telephone Co. (U 1006 C), Ducor Telephone Company (U 1007 C), Foresthill Telephone Co.
5 (U 1009 C), Happy Valley Telephone Company (U 1010 C), Hornitos Telephone Company
6 (U 1011 C), Kerman Telephone Co. (U 1012 C), Pinnacles Telephone Co. (U 1013 C), The
7 Ponderosa Telephone Co. (U 1014 C), Sierra Telephone Company, Inc. (U 1016 C), The Siskiyou
8 Telephone Company (U 1017 C), Volcano Telephone Company (U 1019 C), and Winterhaven
9 Telephone Company (U 1021 C) (the "Small LECs") offer these reply comments in connection
10 with the Proposed Decision Implementing the California Advanced Services Fund Infrastructure
11 Account Revised Rules (“Proposed Decision”). These reply comments do not address every issue
12 raised by every party, but they highlight key areas of consensus and identify proposals that present
13 significant concern for how the California Advanced Services Fund (“CASF”) program will be
14 administered going forward.

15 The Small LECs received seven sets of opening comments from other parties, reflecting a
16 wide range of perspectives. The extent and depth of the comments is a testament both to the
17 ongoing significance of the CASF program and to the potential for the program to create arbitrage
18 opportunities or inefficiencies if it is not properly configured. Based on the opening comments,
19 the Small LECs offer three principal observations. First, there is broad-based concern about the
20 use of subscribership data to define eligible areas and evaluate challenges. The Commission
21 should take note of this consensus and rethink its intention to define service availability by
22 subscribership. Second, CCTA presents a compelling critique of the ministerial process that the
23 Proposed Decision envisions. *CCTA Opening Comments*, at pp. 10-14. If the Commission does
24 not eliminate the ministerial review process, it should at least implement appellate processes and
25 additional standards to address CCTA’s concerns. Third, the Commission should resist proposals
26 to make the “performance standards” or commitments under the CASF more restrictive. The
27 CASF evaluation process functions best when it views public benefits broadly and relies on

1 specific applicants to demonstrate why they are deserving of support. CASF should not be a “one
2 size fits all” program, and efforts to constrict its focus will likely discourage viable projects that
3 could materially advance universal service and broadband access. The Commission should keep
4 the big picture in mind as it frames the program protocols in this proceeding.

5 **II. RELYING ON SUBSCRIBERSHIP DATA TO DETERMINE AVAILABILITY**
6 **WOULD RESULT IN INEQUITIES AND INEFFICIENCIES THAT HARM CASF**
7 **PROGRAM OBJECTIVES.**

8 The opening comments reflect a strong consensus amongst providers that the CASF
9 program should not rely on subscribership data as an indicator of whether broadband-capable
10 facilities exist in an area. *See Frontier Opening Comments*, at p. 2; *AT&T Opening Comments*, at
11 p. 2; *CCTA Opening Comments*, at p. 3. As AT&T succinctly observes, “availability and
12 subscribership are two separate concepts and are measured separately.” *AT&T Opening*
13 *Comments*, at p. 2. The Proposed Decision improperly conflates these concepts, and, in doing so,
14 it “uses a different measure than the Legislature chose.” *Id.*

15 The Legislature framed the infrastructure aspects of the CASF program to address
16 *deployment*, and deployment cannot be reliably determined by customer choices. This is
17 especially true in rural areas, where “it certainly is possible that a provider could have deployed
18 6/1 or faster internet service to a census block but not yet obtained any subscribership.” *Id.* The
19 Small LECs can attest that this circumstance is not theoretical. In some census blocks served by
20 Small LECs, facilities exist to deliver speeds well in excess of 6 Mbps download and 1 Mbps
21 upload, but customers have not yet chosen to subscribe at those speeds. This may point to a need
22 for additional customer education, but it does not erase the existence of the facilities.

23 There are several legal problems with relying on subscribership data in identify CASF-
24 eligible areas. As CCTA notes, “[a]warding a CASF grant to a new provider in this circumstance
25 would violate the prohibition against funding an overbuild.” *CCTA Opening Comments*, at p. 3
26 (citing AB 1665, § 2(c).) Moreover, forcing existing providers to prove the existence of facilities
27 by producing their customers’ bills would raise profound customer privacy concerns. *See CCTA*
28 *Opening Comments*, at p. 3. The Commission should not put carriers in a position where they

1 must disclose confidential subscriber information simply to prove that facilities exist in a given
2 area. More than any other element of the Proposed Decision, the blurring of the lines between
3 deployment and subscribership has the potential for significant harm.

4 As Frontier points out, there are alternatives to relying on subscribership data. Form 477
5 contains deployment data, and could be used to discern the availability of facilities. *Frontier*
6 *Opening Comments*, at p. 2. The Small LECs would not support an availability test that solely
7 relies on the Form 477, as there are other data sets and speed tests that could be presented to prove
8 availability. Regardless of what measurement the Commission uses to determine facilities
9 deployment, it should avoid subscribership.

10 At best, the reliance on subscribership data will create gross inefficiencies by inviting
11 applications in areas that cannot ultimately qualify for CASF support. At worst, the ministerial
12 process under the Proposed Decision would be used to fast-track projects in areas that are already
13 served, which would be a waste of ratepayer resources and an improper arbitrage opportunity for
14 overbuilders.

15 **III. THE PROPOSED MINISTERIAL PROCESS IMPROPERLY REMOVES**
16 **COMMISSION DISCRETION OVER KEY PROGRAM DETERMINATIONS.**

17 As noted in the Small LECs' opening comments, the Proposed Decision's proposal to
18 approve certain CASF projects on a ministerial basis reflects an improper delegation of
19 Commission authority over the distribution of public funds that are held in trust for statutorily-
20 defined public benefits. *Small LEC Opening Comments*, at pp. 4-6. CCTA's opening comments
21 echo this concern and provide additional authorities confirming the limitations of the
22 Commission's delegation authority. *CCTA Opening Comments*, at pp. 10-14. As CCTA notes,
23 the lack of an administrative appeal or review process for ministerial determinations may insulate
24 certain project proposals from proper scrutiny. *Id.* at p. 11. Likewise, the concept that staff would
25 "dispense with" a challenge to a CASF project proposal undermines the transparency of this
26 process. *Id.* at p. 12.

27 The Small LECs remain concerned about the overall effects of the intended reliance on a
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1 ministerial review process, and the Small LECs urge the Commission to seriously consider
2 CCTA's arguments, which highlight the problems with this approach. The record does not
3 support an inference that this program needs a procedural vehicle faster than the Resolution
4 process, and even if there were such a basis, the Commission should not trade speed for
5 transparency. The Commission can accomplish both in a reasonable and equitable way by using
6 Resolutions to present projects, as the program has done from its inception.

7 **IV. THE COMMISSION SHOULD NOT DISCOURAGE PROJECTS BY MAKING**
8 **THE ELIGIBILITY STANDARDS TOO PRESCRIPTIVE.**

9 Throughout this proceeding, the Small LECs have touted the need for flexibility in
10 evaluating CASF projects. Rather than attempting to funnel CASF proposals toward a narrow,
11 predetermined set of criteria, the Commission should rely on the application process to
12 demonstrate the specific benefits of potential projects. Some parties' proposals would make the
13 requirements even more prescriptive than the Proposed Decision's current approach, which will
14 only make it less likely for a diverse and robust set of proposals to be presented. For example, the
15 Public Advocates Office ("Public Advocates") asks the Commission to make the per-household
16 restrictions on the ministerial process even more granular by adopting specific restrictions on
17 "DSL" projects as opposed to "fiber" projects. *Public Advocates Opening Comments*, at p. 4.
18 This proposal risks further constricting the range of eligible projects, thereby discouraging
19 applications before they ever see the light of day. For similar reasons, the Commission should
20 reject proposals from TURN and the Greenlining Institute to further narrow the "low-income" or
21 affordable broadband offering requirement under the Proposed Decision. *TURN/Greenlining*
22 *Opening Comments*, at pp. 11-15. The Small LECs do not object to a Commission policy of
23 encouraging applicants to include a low-income offering in proposals, but it should not be
24 required; if it is required, it should not be defined so narrowly that it undermines specific carriers'
25 abilities to offer a low-income service.

26 **V. CONCLUSION.**

27 The Commission should take careful note of the key areas of parties' concerns about the
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1 reliance on subscribership data and demonstrated problems with the ministerial process envisioned
2 in the Proposed Decision. The Commission should take the time to modify the Proposed Decision
3 to address these concerns, consistent with the comments offered herein.

4 Dated this 4th of December, 2018 at San Francisco, California.

5 Respectfully submitted,

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