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 ADMINISTRATIVE LAW JUDGE'S RULING REQUESTING COMMENTS ON THE ELIGIBILITY FOR AND PRIORITIZATION OF BROADBAND INFRASTRUCTURE FUNDS FROM THE CALIFORNIA ADVANCED SERVICES FUND

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I. INTRODUCTION.

In accordance with the schedule outlined in the Administrative Law Judge's Ruling Requesting Comments on the Eligibility for and Prioritization of Broadband Infrastructure Funds from the California Advanced Services Fund (the "Ruling"), 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), and Winterhaven Telephone Company (U 1021 C) (the "Small LECs") offer these reply comments in response to other parties' opening comments on the Ruling.[1] The interested parties have presented a multiplicity of comments as to how, prospectively, the Commission should evaluate the California Advanced Services Fund ("CASF") . As the Commission considers these proposals, it should ensure that the CASF is flexible enough to consider the totality of circumstances presented by proposed projects, without imposing rigid metrics that may discourage proposals with important public benefits.

Based on the opening comments, the parties share the goal of leveraging CASF funding to bring broadband-capable infrastructure to communities that are currently on the wrong side of the "Digital Divide." However, some of the proposals in opening comments are likely to undercut that objective by disincentivizing applications for grants. The Commission should resist recommendations to impose specific pricing or service quality requirements on prospective grantees. The infrastructure component of the CASF program should focus on deployment, not on regulating the terms of service provided over the resulting facilities. Similarly, neither the

[1] The Small LECs received opening comments from the following parties: California Cable and Telecommunications Association ("CCTA"); California Emerging Technology Fund ("CETF"); California Internet, L.P. ("GeoLinks"); Central Coast Broadband Consortium ("CCBC"); Citizens Telecommunications company of California, Frontier Communications of the Southwest Inc., and Frontier California, Inc. (collectively, "Frontier"); Pacific Bell Telephone Company ("AT&T"); Public Advocates Office ("Cal PA"); The Utility Reform Network and The Greenlining Institute (collectively, "Joint Consumers").

eligibility requirements nor the scoring criteria should be overly prescriptive. Imposing strict "per household" cost limitations, administrative expense caps, or regional "significant contribution" thresholds will risk alienating otherwise viable projects before they are ever considered. In particular, the Small LECs are concerned that these proposals will discriminate against smaller providers and make it difficult or impossible to reach certain rural areas, which, by their nature, are sparsely populated and inaccessible. The Small LECs also share the view of many of the other parties that public safety benefits, the presence of anchor institutions, and the low-income characteristics of an area are variables that justifiably increase the attractiveness of a project. However, none of these factors should override the "case by case" analysis required by statute. Pub. Util. Code § 281(f)(13).

The Small LECs agree with the plurality of the commenting parties that grant applicants should generally have some financial stake in their proposed projects, but also agree that the Commission should adjust the level of funding upward from the previous 60% grant component. CETF's suggestion to move the "baseline" to 80% is a reasonable way to recalibrate the funding distribution percentages for a typical project. *CETF Opening Comments*, at p. 10. Finally, like the majority of the commenting parties, the Small LECs support the continuation of the Resolution process as the vehicle for processing CASF proposals.

II. THE COMMISSION'S CASF REVIEW STANDARDS SHOULD BE INFRASTRUCTURE-FOCUSED, FLEXIBLY-ADMINISTERED, AND TAILORED TO ACCOUNT FOR THE TOTALITY OF THE CIRCUMSTANCES PRESENTED BY EACH GRANT PROPOSAL.

The Commission should attempt to attract as many quality proposals as possible to fill as many needs for broadband capable facilities as possible. As the Small LECs have articulated in their opening comments, the imposition of rigid metrics and requirements will deter qualified applicants from applying for grants under the CASF program. This, in turn, would weaken the pool of projects that the Commission is able to consider, thereby slowing California's progress towards CASF's 98% adoption goal. Burdensome application requirements would not only discourage applicants' proposal of potential projects, but would also chill companies' consideration

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and incorporation of CASF projects into their business plans.

The CASF program is not a government contracting process, and the Commission should not administer it in that manner. It is a public policy program grounded in universal service policy that aims to attract private enterprise to make investments in areas where broadband-capable facilities might not otherwise be deployed. Several of the proposals in opening comments are too prescriptive, and cut against the objective of encouraging more proposals.

A. The Commission Should Not Impose Pricing or Service Quality Constraints on CASF Grants.

In opening comments, some parties propose to prescribe the pricing and service quality of Internet access service provided over CASF-funded infrastructure. These proposes are misguided, and run a significant risk of discouraging applications. As AT&T observes, the Commission should "focus on the deployment-based goals of AB 1665 rather than imposing added obligations outside the statute." *AT&T Opening Comments*, at p. 1.

The Small LECs agree with Frontier that "[a]ffordable broadband offerings are not required by law and should not be made a requirement of grants," and more generally, "expending more time and resources on establishing overly complex processes that are not required by statute unnecessar[ily] prolongs the implementation process and creates additional roadblocks for providers that seek to help close the Digital Divide through CASF grant applications." *Frontier Opening Comments*, at pp. 4, 5. Although the Small LECs do not oppose the consideration of low-income pricing as a funding factor, it should not be an eligibility requirement. The focus of the CASF grant is deployment, not pricing.

The Small LECs appreciate the Joint Consumers' concern and reminder that AB 1665 was drafted with an eye toward digital inclusion, and that without affordable plans, low-income Californians in rural areas cannot access technology and connectivity benefits. Nevertheless, affordability in advanced communications services should be addressed in the LifeLine proceeding on an industry-wide basis, not by constricting the requirements for CASF. Preserving the affordability issue for the LifeLine proceeding will allow the CASF grant to address universal access by focusing on deployment, and identifying the most effective use of grant funds to achieve connectivity in unserved and underserved areas.

Attempts to impose service quality or network performance metrics through the CASF process present similar concerns. The adoption of minimum performance standards, as proposed by Cal PA and Joint Consumers, would result in significant regulatory burdens being applied to grant recipients that other carriers do not experience. *See Cal PA Opening Comments*, at pp. 10-15; *Joint Consumers Opening Comments*, at pp. 5-6.

B. The Commission Should Reject Proposals that Would Discriminate Against Small, Rural Providers.

The opening comments reflect at least two proposals that appear to discriminate against small, rural providers. As service providers serving in rural areas that need upgraded broadband-capable infrastructure, the Small LECs seek fair CASF grants terms that do not penalize them for their small size.

First, as noted in the Small LECs' opening comments, the proposed 15% limitation on administrative expenses could discourage and disadvantage projects from smaller carriers because they lack the economies of scale and associated administrative streamlining of larger carriers. Nevertheless, some parties appear to support the 15% limitation, without providing a reasonable definition of "administrative expenses" or justifying this arbitrary percentage. *See CETF Opening Comments*, at p. 12; *Central Coast Broadband Consortium*, at p. 5. Cal PA appears to take these comments even further, suggesting that all "administrative" costs associated with pursuing a project would be unavailable through the grant process. *Cal PA Opening Comments*, at p. 8. This is an untenable position, especially if the term "administrative expenses" is defined to include the cost of California Environmental Quality Act ("CEQA") compliance and the costs of engineering a project.[2]

A proscription on administrative expenses would likely create unique harm for smaller

[2] The Small LECs do not disagree with Cal PA that CASF funding is unavailable for the ongoing operating costs associated with providing service over grant facilities, but the administrative costs of the construction process, regulatory approval process, and CEQA process are not ongoing operational costs in that sense.

providers, which the Joint Consumers properly recognize. *See Joint Consumers' Opening Comments*, at p. 11 ("We encourage the Commission to consider whether the amount of administrative costs reimbursement could unduly burden smaller companies compared to larger companies that can better absorb the costs."). Several other commenters express appropriate skepticism about the proposed cap, which underscores the Small LECs' concerns. *See CCTA Opening Comments*, at p. 6; *AT&T Opening Comments*, at p. 9. The Small LECs appreciate these acknowledgments, and urge the Commission to avoid arbitrary expense caps in structuring the CASF program. There is no reason why expenses associated with a grant cannot be evaluated based on its unique merits and costs, consistent with statute. *See* Pub. Util. Code § 281(f)(13).

The Small LECs have the same concern with imposing a "cost per household" limitation that would operate as a barrier to otherwise beneficial projects and uniquely disadvantage small providers. As GeoLinks observes, the proposed cost per household limitation of $4,000 to $8,000 for wireline carriers does not appear to be grounded in any analysis of reasonable cost in unserved or underserved areas; it is apparently a reflection of the Commission's past project approvals. *GeoLinks Opening Comments*, at p. 9. However, the Commission has adopted many CASF grants with important public benefits with costs per household higher than the suggested range of $4000 to $8000 per household.[3] There may be good reasons for the cost per household in a given area to be higher, like terrain, permitting difficulties, or access to middle mile facilities.

The Commission should not lose the potential public safety, regional connectivity, anchor institution, and community benefits of a project by sacrificing these public benefits on the altar of a predetermined "cost per household" metric. This is especially true in areas served by small,

[3] *See* Res. T-17565 (Bright Fiber Network, Inc. Bright Fiber Broadband Project); Res. T-17565 (Siskiyou Telephone Company Happy Camp to Somes Bar Project); Res. T-17551 (Ponderosa Telephone Company Cressman Unserved and Underserved Broadband Project); Res. T-17524 (Race Telecommunications Gigafy Occidental Project); Res. T-17477 (Race Telecommunications Gigafy Mono Underserved Broadband Project); Res. T-17488 (Race Telecommunications Five Mining Communities Underserved Broadband Project); Res. T-17480 (Race Telecommunications Gigafy Backus Unserved Broadband Project); Res. T-17424 (Ponderosa Telephone Company Beasore/Central Camp Project); Res. T-17423 (Ponderosa Telephone Company Big Creek Unserved and Underserved Broadband Project); Res. T-14718 (Klamath River Rural Broadband Initiative Project); Res. T-17352 (IP Networks Highway 36 Humboldt-Trinity Counties Project).

rural providers because the service territories are characterized by large distances between customer locations and, in many cases, difficult terrain. The Commission should not systematically exclude potential projects in areas served by these companies by adopting an unreasonably low cost per household limit.

C. The Term "Significant Contribution" Should Be Defined Broadly and Applied on a Case-By-Case Basis.

The Ruling sought input on how the Commission should define the term "significant contribution," as used in Public Utilities Code Section 281(f)(13). The Small LECs urge the Commission to define that term broadly, and to include both quantitative and qualitative measures of whether a project makes a "significant contribution."

Like Frontier, the Small LECs believe that the Commission should weigh public interest factors and determine how significantly a project contributes to the goals of the CASF program, on a case-by-case basis. *Frontier Opening Comments*, at p. 3. The Joint Consumers' suggestion to look at each application as the source of information about "significant contributions" factors is a reasonable starting point. *Joint Consumers Opening Comments*, at p. 4. Applicants should have tremendous insight as to their projects' public interest benefits, and decision-makers would benefit from their full disclosure and explanation. This is consistent with the "case by case" approach mandated by Public Utilities Code Section 281(f)(13).

The Small LECs agree with Frontier that remoteness,[4] population density, and high cost are key factors, which at a certain level, persuade in favor of full funding. Remote areas and landmarks that could derive immense community, health, safety, and economic benefits from the deployment of broadband infrastructure should be attractive targets for the CASF program. *Frontier Opening Comments*, at p. 2. Likewise, places like campgrounds, wilderness attractions, tribal lands, and hydroelectric dams—whose "significant contributions" are not necessarily

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[4] Contrary to the views of CCBC, the Small LECs do not believe that classifying remoteness into three discrete categories, "accessible, remote, and inaccessible" is necessary, as this would create the additional haphazard and potentially burdensome task of creating definitions for a concept that does not require partition in the first place. *See CCBC Opening Comments*, at p. 2.

captured by “per household” metrics—are nevertheless critical targets that should be afforded consideration for additional funding. It is also reasonable, as Joint Consumers suggest, for the Commission to consider low-income characteristics of an area in its grant funding determination. *Joint Consumers Opening Comments*, at p. 4. However, no single factor amongst these factors should be able to override the others. Instead, the Commission should consider each project as a whole.

An analysis of “substantial contribution”—and the scoring criteria that measures that contribution—should give significant weight to the public safety benefits of a project, and the extent to which it benefits anchor institutions. The Joint Consumers properly recognize the importance of these factors, noting that “another factor could be unserved anchor institutions that provide connectivity for communities during emergency situations and provide ongoing health and safety service broadly throughout the project area.” *Joint Consumers Opening Comments*, at p. 5. In the Small LECs’ experience, such a location could be a non-traditional anchor institution such as a general store, a park, or a fairground.

The Commission should be skeptical of the narrower definitions of “substantial contribution.” Cal PA offers a definition of this term that would be unduly limiting and potentially foreclose projects in many rural areas. Cal PA suggests that “significant contribution” should be measured as a fixed percentage of the total households projected as “unserved” in a given “consortia region.” *Cal PA Opening Comments*, at pp. 5-6. Measuring substantial contribution in this overly numerical manner would ignore the extent to which unserved households intersect with carriers’ existing service backbones and service territories. A true measurement of “significant contribution would not rest solely on how many new households are connected within a “consortia” region. It would consider the overall benefits to the communities being served, taking into account their locations relative to existing facilities.

III. ESTABLISHING AN 80% FUNDING BASELINE WITH OPPORTUNITIES TO INCREASE FUNDING TO 100% WOULD BE AN APPROPRIATE STRUCTURE FOR THE DISTRIBUTION OF CAPITAL UNDER THE GRANT PROGRAM.

Like many parties, the Small LECs believe that the Commission must strike a balance between incentivizing a commitment from the grantee and providing enough funding to support deployment in hard to serve areas. CETF makes a constructive suggestion as to how to achieve that balance under the recalibrated CASF program following AB 1665. CETF proposes that the "baseline" for projects be moved to "80% from 60%," with the opportunity to adjust the percentage based on project needs. *CETF Opening Comments*, at p. 10. This is consistent with the Small LECs' observation in opening comments that most projects should fall in the 70% to 90% range of grant funding. *Small LECs Opening Comments*, at p. 2.

The governing statute is clear that 100% grant funding must be an option, so Cal PA's proposal that the Commission require applicants to "commit to funding no less than 15 percent of a project's capital costs" is contrary to law. *Cal PA Opening Comments*, at p. 1. At the same time, AT&T's proposal to establish a "presumption" that all projects will receive 100% funding unless demonstrated otherwise goes too far. *AT&T Opening Comments*, at p. 4. The 80% funding level is a reasonable starting point, and "case by case" factors should determine whether funding moves upward or downward from that figure.

IV. THE RESOLUTION PROCESS REMAINS THE APPROPRIATE VEHICLE FOR CASF GRANTS TO BE PRESENTED AND CONSIDERED.

Several parties responded to the implication in the Ruling that a "ministerial" review that awards grants without Commission approval would replace the Resolution process. *See Ruling*, at p. 6; *CCTA Opening Comments*, at pp. 5-6; *Cal PA Opening Comments*, at p. 7; *CETF Opening Comments*, at p. 10; *GeoLinks Opening Comments*, at pp. 9-10. Insofar as the proposal in the Ruling was intended to signal a move away from the Resolution process, such a change would be improper.

Both as a matter of law and a matter of sound governance and transparency, CASF grants should not be awarded without a formal action of the Commission, which can only occur following a full vote of the Commission. *See* D.15-07-010 ("[a]s a general matter, the Commission speaks only through its decisions, and not through the statements of any individual Commissioner or staff person.").[5] As CCTA points out, the statutory requirements underlying the CASF program direct grants to involve "commission review" and a "resolution" for completing the grant process. *See CCTA Opening Comments*, at p. 6 (citing Pub. Util. Code §§ 281(f)(8), 281(f)(10)). Staff should play an important role in evaluating CASF projects and making recommendations, but the ultimate grant decision resides with the Commission, as each project merits a "case by case" evaluation. *See* Pub. Util. Code § 281(f)(13).

The Resolution process is also the best procedural fit given the nature of the CASF grants. Grant proposals naturally entail fact-specific inquiries that rely upon the expertise of the reviewing staff. Further, grants can be the subject of challenges, and knowledgeable parties may hold differing views about whether or not an area is already served, as well as whether a proposal satisfies the public interest standards under the program. These debates require the Commission's ultimate determination, and the Resolution process provides an appropriate vehicle for that process. Even if the scoring criteria change, the overall process—starting with staff review and resulting in a Draft Resolution for Commission consideration—is the appropriate process.

The Commission should also avoid unnecessarily complicating the grant review process. CETF suggests that it should have a role in screening projects pursuant to a "preferred scenario" that it has enunciated, which is not derived from statute. *CETF Opening Comments*, at p. 2. While CETF can be an important partner in this process, it should not have a formalized role in the review process, both because it is appropriate to leave this responsibility with the Commission, and because adding an additional layer of bureaucracy would unnecessarily clog the application review process.

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[5] *See also* Res. G-3372, n. 1 (". . . informal advice provided by staff is not binding upon the Commission which issues formal opinions only through its decisions and resolutions.").

V. CONCLUSION.

The Small LECs are encouraged by the thoughtful discussion of issues reflected in the comments thus far, and the Small LECs appreciate the acknowledgment by many parties that there is no one "formula" for a successful CASF grant. As the Legislature intended, the Commission should consider all relevant variables, without being captured by "per household" metrics, specific pricing constraints, or arbitrary expense caps. The Small LECs encourage the Commission to structure the CASF program eligibility and administration in a manner that will continue to support projects in the most needed areas in the future, to move toward the goal of bringing broadband-capable facilities to all Californians.

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