

**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

**REPLY COMMENTS OF THE UTILITY REFORM NETWORK ON ALJ'S RULING  
SOLICITING ADDITIONAL COMMENTS ON ISSUES IDENTIFIED IN  
ORDER INSTITUTING RULEMAKING 12-10-12**



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**I. INTRODUCTION**

The Utility Reform Network (TURN) hereby submits its Reply Comments on the ALJ's Ruling Soliciting Additional Comments on Issues Identified in Order Instituting Rulemaking (OIR) 12-12-12 (ALJ Ruling). In the ALJ Ruling the Commission is seeking additional comments on safeguards to adopt in situations where an unregulated provider is eligible for California Advanced Services Fund (CASF) grants.

**II. PERFORMANCE BOND REQUIREMENTS**

The challenge for the Commission is to develop safeguards that strike the right balance to ensure that ratepayer funds are appropriately spent while not creating disincentives to eligible CASF candidates. While TURN supported applying the performance bond requirements established in Resolution T-17233 (ARRA Resolution) for unregulated applicants, we are also mindful that these requirements may be so onerous that such entities may not apply for CASF

funding. The ALJ Ruling proposes, “reducing the post project completion performance bond requirements to an amount that is less than the full amount of the project award.”<sup>1</sup> The ALJ Ruling also seeks proposals as to how much the bond requirement should be reduced. In opening comments the Division of Ratepayer Advocates (DRA) opposed any reduction in the performance bond requirement post project completion.<sup>2</sup> In the alternative, if the Commission adopts a reduced performance bond, DRA proposes that the amount of the bond should be “at least 50% or more of the total loan or grant amount.”<sup>3</sup> In comparison, the Small LECs and the California Cable and Telecommunications Association (CCTA) agree that a reduced performance bond after project completion would be appropriate. CCTA proposes a “bifurcated performance bond when a performance bond for the post completion period is unavailable.”<sup>4</sup> The Small LECs recommend a \$25,000 post project completion bond.<sup>5</sup>

TURN is sensitive to the potential post project completion risks identified by the ALJ and DRA. However, in trying to achieve the right balance between possible risks to ratepayers and encouraging unregulated entities to apply for CASF grants, TURN suggests a two-step process. Initially, an applicant should be required to attempt to obtain a full performance bond. If the applicant is unable to obtain such a bond, then the Commission could adopt the CCTA bifurcated approach wherein the applicant would be required to obtain the full bond until project completion, and a lesser bond to ensure post completion performance. The \$25,000 bond proposed by the Small LECs appears to be too small (depending on the project) and the 50%

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<sup>1</sup> ALJ’s Ruling Soliciting Additional Comments on Issues Identified in Order Instituting Rulemaking (OIR) 12-12-12, p.7 (ALJ Ruling).

<sup>2</sup> Comments of DRA on the ALJ’s Ruling Soliciting Additional Comments on Issues Identified in OIR 12-10-012, p. 4 (DRA).

<sup>3</sup> DRA, p. 4.

<sup>4</sup> Comments of CCTA on the ALJ’s Ruling Soliciting Additional Comments on Issues Identified in OIR 12-10-012, p. 2 (CCTA).

<sup>5</sup> Comments of the Small LECs on the ALJ’s Ruling Soliciting Additional Comments on Issues Identified in OIR 12-10-012, p. 3 (Small LECs).

amount recommended by DRA appears too large. Again, in an attempt to strike the right balance, TURN proposes 25% of the total grant amount.

However, the Commission should also consider whether the performance bond for local governments who apply for CASF grants should be different than for private sector providers. As discussed in the reply comments of the Institute for Local Self-Reliance,

Local governments already have obligations to be transparent and are democratically accountable to the public. They already follow accepted accounting procedures and can be held accountable if they do not uphold the terms of any agreement made with CASF to expand access to the Internet within their jurisdiction. Similarly, cooperatives are regulated by member-owners, who themselves would be harmed by failure to expand access to the Internet.<sup>6</sup>

The ALJ Ruling also states under the penalties section that “we propose that, as a condition for accepting CASF grants, receiving entities be contractually obligated to comply with Commission rules and statutes.”<sup>7</sup> If this is adopted, as TURN has previously supported, no matter what amount the performance bond ultimately is established, the Commission can enforce the contract including post completion requirements.

### **III. LIQUIDITY REQUIREMENT**

The ALJ Ruling proposes adopting a liquidity requirement for unregulated applicants similar to “the demonstration required of applicants for a CPCN” so that “unregulated broadband providers receiving CASF support are capable of meeting start-up expenses over and above those covered by a CASF grant or loan or any external source of funding.”<sup>8</sup> To effectuate this, the ALJ Ruling proposes requiring any unregulated applicant to “demonstrate that it has the greater of \$25,000 or 10% of the total project cost in cash or cash equivalents on hand, capped at a total of \$100,000.”<sup>9</sup> TURN supports the intent behind this proposal but questions whether a cap of

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<sup>6</sup> Reply Comments of the Institute for Local Self-Reliance (Dec. 18. 2012), p. 7 (ILSR).

<sup>7</sup> ALJ Ruling, p. 9.

<sup>8</sup> ALJ Ruling, p. 8.

<sup>9</sup> ALJ Ruling, p. 8.

\$100,00 is sufficient for large projects for example over \$1 million. Again, as with the performance bond discussed above, TURN also asks the Commission to explore whether a liquidity requirement is necessary for local governments, and if so whether it should be the same amount as for private sector CASF applicants.

#### IV. PENALTIES

TURN supports the proposal in the ALJ Ruling that “as a condition for accepting CASF grants, receiving entities be contractually obligated to comply with Commission rules and statutes.”<sup>10</sup> This is consistent with TURN’s recommendation<sup>11</sup> and consistent with Commission practice such as for wireless LifeLine<sup>12</sup>. Both the Small LECs and CCTA object that it would be unduly burdensome for an unregulated CASF grantee to be subject to all the Commission’s rules and regulations. Instead, they both propose that such grantees only be subject to the CASF rules.<sup>13</sup> TURN disagrees with the Small LECs and CCTA that unregulated entities only be subject to the rules relating to the CASF. While CCTA raises the specter of “regulatory burdens and constraints,”<sup>14</sup> that would occur if unregulated entities were subject to all the Commission’s rules and regulations, no tangible examples were provided. In the absence of specific problems, TURN submits that unregulated entities should be subject to the full range of applicable Commission regulations and if a particular problem arises deal with it at the time through a formal exemption process. Further, this Commission has been applying a very light regulatory hand to regulated carriers. We expect the same to be for CASF grantees unless specific problems develop.

DRA takes a very different tact arguing that “the Commission should rely on its regulatory authority to ensure compliance with CASF conditions, and reject the notion that

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<sup>10</sup> ALJ Ruling, p. 9.

<sup>11</sup> See, for example, Reply Comments of TURN on the OIR (Dec. 18, 2012), p. 5.

<sup>12</sup> D.10-11-033, p. 68.

<sup>13</sup> Small LECs, p. 4; CCTA, p. 2.

<sup>14</sup> CCTA, p. 5.

entities should be contractually obligated to comply with Commission rules and statutes, as suggested by the ALJ Ruling.”<sup>15</sup> TURN submits that the Commission can do both - contractually obligate CASF grantees as well as rely upon whatever regulatory authority it has with respect to these entities and ensure that the grantee fully understands and accepts these obligations.

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Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
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TURN

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<sup>15</sup> DRA, p. 7.