

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

OPENING COMMENTS OF THE CALIFORNIA
CABLE & TELECOMMUNICATIONS ASSOCIATION

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The California Cable & Telecommunications Association (CCTA) hereby files its Opening Comments pursuant to Rule 6.2 of the California Public Utilities Commission's (Commission's) Rules of Practice and Procedure, and the Order issuing the above-captioned Rulemaking.

CCTA's members are cable companies that provide video, broadband and voice services in California. Cable operators in California have invested billions of dollars in California's broadband infrastructure, and have built out their infrastructure largely without subsidy. Nevertheless, CCTA and its members recognize that cost-effective broadband service, particularly in unserved high cost rural areas, may be more efficiently provided by alternative technologies, or with an initial public subsidy, and we do not oppose the Commission's proposal to expand the availability of CASF funds to entities that do not hold a CPCN or Wireless registration.

Nevertheless, CCTA and its members believe that expansion of funds to broadband service providers that do not hold a CPCN or Wireless registration should be limited to unserved areas, because such areas reflect where there is clear market failure and where alternate providers may fill a gap.¹ The Commission should limit its expanded eligibility to unserved areas, so as to spur greater deployment in such regions, consistent with its policy of prioritizing unserved areas.²

CCTA also believes that, at a minimum, the Commission's Resolution T-17233 requirements regarding qualifications/backgrounds, financial/performance audits,³ and performance bond are appropriate safeguards to demonstrated that these entities have financial, technical and managerial competence to build and operate broadband networks which were used to review the applications for CASF funds by ARRA recipients, are necessary for the review of CASF applications submitted by non-CPCN or WIR entities. Reliance on the NTIA's definition of a facilities-based broadband service provider that is used to compile the data shown on the National Broadband Map is also an effective method to address the appropriate entities and projects eligible for CASF infrastructure funding.

As the Commission recognizes, it will require legislative modifications in order to achieve its goal here, and, the proposed *legislative* modifications to expand the pool of eligible CASF applicants should include certain criteria for CASF

¹ As the OIR notes, the Commission recognized earlier in the CASF program that it should be "open-minded about more creative and non-traditional ways to achieve broadband access to *unserved areas* after this initial round is completed." OIR at 7, n.14 (emphasis added). *See also* OIR at 8 (noting the high cost of deployment impeding the development in "virtually all" unserved areas and most underserved areas).

² *See* D.07-12-054 at 24.

³ *See* Res. T-17233, at 5-8.

applications not heretofore necessary for CPCN and WIR providers. Specifically, because the Commission is proposing to allow local government entities to apply for CASF funds, the expenditure of public funds used for the project must be carefully addressed. In addition to the fact that public monies, rather than private investment will be used for a project, a local government has the incentive to discriminate against any other potential provider in its administration regarding access to rights of way and other permits. Moreover, there is little if any evidence that municipal investments in broadband networks are long term viable solutions to the digital divide.

Recognizing that the Commission would have little authority over a local government entity applying for CASF funds, the Commission, and the Legislature should consider legislation that includes certain, specific requirements for local governments requesting CASF funding for infrastructure projects in unserved areas, so that public funds are not used to embark upon an ill-advised, or unsupported project. These requirements should include at a minimum, that projects be subject to a public hearing, be approved by the voters, and that use of any locally-owned utility not be assumed in the financial assumptions for operating the network. In addition, a local government must be able to demonstrate that it can operate its project without subsidy once the CASF grant is expended for infrastructure. These requirements will assist the Commission in ensuring that the public supports the expenditure, application submitted by a local government for CASF funding, and allow the Commission to limit its consideration of financial, technical and managerial competence to those requirements as proposed in the Rulemaking and

used for ARRA funded CASF applicants to ensure that the CASF ratepayer monies are appropriate spent.

In addition, CCTA believes that any entity applying for CASF funding should serve notice of its CASF application to any local telephone and cable operator providing service in its proposed project area, or, if the area is unserved, in the closest served area to the proposed project. This will help provide adequate notice of the project and the request for CASF funds, and an opportunity to respond and confirm that the proposed service area is unserved. This is particularly important in rural areas served by smaller providers, like small cable providers, that are unlikely to have a regulatory department to consistently monitor Commission filings. The Rulemaking well describes the challenge facing this Commission in issuing CASF grants that address the remaining areas in California where broadband is unavailable or underserved, and the difficulty of adequately addressing broadband buildout in unserved rural areas.⁴

CCTA and its members recognize the critical nature of the mission to build out in unserved rural areas, and it may be that this goal will be accomplished more efficiently and economically by providers using alternative technologies, or with an initial public subsidy. Notwithstanding the importance of deploying broadband to the remaining 4% unserved areas of the state,⁵ broadband adoption measures are also essential, not only to stimulate and ensure demand for the infrastructure, but to ensure that all of California's citizens have the full benefit of the infrastructure's

⁴ As the OIR notes, only \$41,084,518 in authorized grants have been made, out of the total \$225 million available for CASF infrastructure funding. OIR at 11-13. This means that about 18% of available funds have been granted to date.

⁵ See 2008 California Broadband Task Force Report (finding that broadband is available for 96% of Californians).

capabilities. California's broadband adoption rate is at 72% of the adult population,⁶ which reflects that there is a considerable portion that has yet to recognize or access the benefits of broadband. As Commission noted earlier this year, the "ultimate goal of the CASF program is to increase the adoption of broadband."⁷ Accordingly, CCTA offers a modification to the OIR's proposals as requested,⁸ and recommends that the Commission seek an increase in the percentage of (or reallocation of) CASF funds allowed for adoption programs. The Commission could recommend such an increase, or reallocation of funds for adoption projects, in the proposed legislation, along with expansion of the eligibility of entities capable of receiving CASF funding.

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Respectfully submitted

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⁶ California Emerging Technology Fund Annual Report 2011-2012, at 18.

⁷ D.12-02-015 at 3. The Legislature further recognized that adoption should be promoted, with its modification to the program to provide for broadband consortia grants.

⁸ See OIR at 23.