

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

COMMENTS OF THE CALIFORNIA CABLE AND
TELECOMMUNICATIONS ASSOCIATION ON THE ADMINISTRATIVE
LAW JUDGE'S RULING SOLICITING ADDITIONAL COMMENTS ON ISSUES
IDENTIFIED IN ORDER INSTITUTING RULEMAKING 12-10-012

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The California Cable and Telecommunications Association (CCTA) hereby submits its Comments in the above-captioned proceeding on the Administrative Law Judge's (ALJ's) Ruling Soliciting Additional Comments on Issues Identified in Order Instituting Rulemaking 12-10-012(Ruling in OIR).

The Ruling specifically seeks comments on three issues: whether it is necessary to require non-telephone corporation entities receiving a CASF grant to maintain a performance bond equal to the full amount of a CASF grant once a funded project has been completed (Ruling at 3); whether these entities should be required to demonstrate that they have sufficient liquidity to meet start-up expenses which may not be covered by CASF grants or external financing (Id.); and whether the Commission should contractually obligate non-telephone corporations to comply with all Commission rules and regulations (Ruling at 9) as a condition of participating in the CASF.

As discussed below, CCTA and its members submit that, following completion of a funded project has occurred, a performance bond in an amount less than the CASF grant – *i.e.*, a bifurcated performance bond – may be necessary if, as the Ruling alleges, the current performance bond requirements prevent non-telephone corporations from meeting CASF eligibility requirements, and may be appropriate in cases where the non-telephone corporate entity is self-funding the portion of the project not funded by the CASF. If the Commission does adopt a bifurcated performance bond, a reasonable liquidity requirement proportionate to the grant amount additionally helps protect ratepayers and ensures that the entity is capable of meeting start-up expenses for the specific grant project.

Finally, CCTA and its members submit that non-telephone corporations should not be essentially treated as a telephone utility as a condition of receiving a CASF award by having to contractually agree to comply with all of the Commission’s rules and regulations. This proposal adds costs and burdens to CASF compliance, and contradicts the goal of extending CASF funding to non-telephone corporations to ensure that broadband facilities are ubiquitously available. Non-telephone corporations participating in the CASF program must comply with the Commission’s rules governing the CASF, but they do not by virtue of being a recipient of a CASF award become entities subject to all the Commission’s rules and regulations.

I. The Commission Should Implement a Bifurcated Performance Bond When A Bond For The Entire Project Is Unavailable.

The Commission should implement a bifurcated performance bond when a performance bond for the post project completion period is unavailable. The current CASF eligibility criteria requires the Commission to evaluate and ensure the

financial, technical and managerial competence of CASF applicants, including an agreement to allow the Commission to inspect the applicant's accounts, books, papers and documents related to the application and the award. The additional requirement to obtain a performance bond further ensures and protects any risk to ratepayers from misuse of public monies, mismanagement or default on the CASF funded project.

The Commission's review of the applicant's financial, technical and managerial competence, review of accounts and documents related to the award, and a performance bond for the construction or project completion, should be sufficient to protect the award monies, particularly in cases where the applicant is self-funding a large part of the project, and where the applicant is not so reliant on public funds as to not have a significant stake in the project's success. CCTA is less convinced that establishing an additional liquidity requirement for projects where a performance bond for post-completion of the project is unobtainable should always be necessary if the financial review of the applicant indicates that the applicant can convincingly show that the project is secure. This is particularly so in the case of an established, profitable provider that seeks CASF funds to upgrade facilities or expand existing operations. Nevertheless, the applicant for CASF funds is fundamentally different than a CPCN applicant, since the CASF applicant is seeking to obtain a grant of public monies for its own construction project. Thus, if a financial review of the CASF applicant indicates a relatively weaker financial standing, a reasonable, proportionate liquidity requirement for the specific grant project, or a letter of credit, may be an appropriate means of protecting public funds.

II. A CASF Grantee Must Comply With CASF Requirements Or Forfeit Its Performance Bond or Other Surety.

The goal of the CASF is to encourage deployment of high-quality advanced communications services to all Californians. Significant private investment has occurred in California that has increased the number of served communities, and inroads have been made on adoption, and there is a significant surplus of available CASF grant funds, including the additional \$125 million for infrastructure grants and loans authorized by SB 1040 (OIR 12-10-012 at 13); of the \$100 million made available for CASF grants, only \$41 million have been authorized for 34 projects (Id at 11).

If the Commission is to fulfill its obligation to distribute the CASF funds and reach the goals of the CASF program, funding will need to be expanded to non-certificated entities, particularly for projects in unserved areas. Nevertheless, the Commission acknowledges that non-certificated entities have required significant assistance from the staff to negotiate the application/grant process in the past (Id. at 6). Thus it is in the Commission's interest, as well as the public's interest, to ensure that obtaining a CASF grant requires the ability to meet the CASF eligibility requirements, including the financial review, audits and performance bond requirements, without imposing constraints that render participation in the Fund a heavier liability for financially qualified service providers. The CASF eligibility criteria and review process are not minimal requirements: the CASF grantee does face the potential of a call of the bond should it fail to provide access to its books and records, or should the grant recipient fail to complete the project. As the Ruling itself states, the chances of fraud not being detected prior to the completion of the project

or of becoming manifest only after the project's completion are remote (OIR at 6-7). Further, if the Commission does retain a bifurcated performance bond, the specter of a call of the bond remains even after the completion of the project. For these reasons, there is little justification for exposing non-certificated entities to further regulatory burdens and constraints.

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Respectfully submitted

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