

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Approval of Consortia Grant Account
Funding From The California Advanced
Services Fund in R.06-06-028.

Draft Resolution T-17349
(Served November 1, 2011)

**REPLY COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON DRAFT
RESOLUTION T-17349 AND ALTERNATE RESOLUTION
T-17349 FOR APPROVAL OF FUNDING FROM
THE CALIFORNIA ADVANCED SERVICES FUND**

KIMBERLY J. LIPPI
Attorney for the
Division of Ratepayer Advocates
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Phone: (415) 703-5822
Fax: (415) 703-4492
E-mail: kjl@cpuc.ca.gov

MICHELE KING
Staff Analyst for the
Division of Ratepayer Advocates
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Telephone: (415) 703-1349
E-mail: mki@cpuc.ca.gov

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I. INTRODUCTION

Pursuant to Rule 14.5 of the California Public Utilities Commission's Rules of Practice and Procedure, the Division of Ratepayer Advocates (DRA) submits these Reply Comments on Draft Resolution T-17349 (Draft Resolution) and Alternate Draft Resolution T-172349 (Alternate), relating to funding from the California Advanced Services Fund (CASF) Rural and Urban Regional Broadband Consortia Account (Consortia Grant Account).

In addition to DRA, three parties submitted opening comments on the Draft Resolution and Alternate: The Youth Policy Institute on behalf of Los Angeles County Regional Broadband Consortia, Amador-Tuolumne Community Action Agency, and the California Partnership for the San Joaquin Valley (Partnership). The comments from these three parties are nearly identical. They all claim, verbatim, that there are no constraints in SB 1040 on the amount of funds that can be deposited or distributed annually, and urge the Commission to adopt the higher funding level for the Los Angeles Region in the Alternate rather than the budget proposed in the Draft Resolution.¹

These parties are mistaken in their claim that there are no constraints on the amount of funds that may be awarded. SB 1040 specifically provides that the Commission shall develop, administer and implement the CASF. Moreover, Decision (D.) 11-06-038 sets upper limits for each applicant of \$150,000 in year 1 and \$450,000 over three years, whereby the Los Angeles County Regional Broadband Consortium (LACRBC) is eligible for budget limits for each of its five sub-regions. As such, DRA continues to urge the Commission to deny the Alternate because it would exceed Consortia Grant Account limits in the Los Angeles region by \$20,000 in year 1 and by \$963,073 over three years.

II. COMMENTING PARTIES MISTAKENLY CLAIM THERE ARE NO LIMITS FOR CONSORTIA GRANT BUDGETS

The commenting parties argue that SB 1040 contains no constraints on the amount of funds that can be collected or distributed annually.² However, this claim is mistaken for several

¹ Comments of the Youth Policy Institute on D.11-06-038 for Communications Division's Draft Resolution T-17349 and Alternate Draft Resolution T-17349 at 1; Comments of Amador-Tuolumne Community Action Agency on D.11-06-038 for Communications Division's Draft Resolution T-17349 and Alternate Draft Resolution T-17349 at 1-2; Comments of California Partnership for the San Joaquin Valley (Partnership) on D.11-06-038 for Communications Division's Draft Resolution T-17349 and Alternate Draft Resolution T-17349 at 1.

² Ibid.

reasons. First, SB 1040 specifically allocates \$10 million to the Consortia Grant Account, thus necessarily limiting the amount of money that can be collected and distributed.³ Moreover, while SB 1040 authorizes the Commission to collect an additional \$125 million for the CASF over the previously authorized \$100 million, it specifically states that the Commission may collect these additional moneys “in an amount not to exceed twenty-five million dollars (\$25,000,000) per year”⁴, thus placing another limit on the amounts that may be collected (and thus distributed) annually. While the Commission may collect a higher amount, it must first determine that collecting a higher amount in any year will not result in an increase in the total amount of all surcharges collected from telephone customers that year.⁵ The Commission has not made that determination.

In addition, SB 1040 specifically provides that the Commission shall develop, administer, and implement the CASF.⁶ Pursuant to that authority, in Decision (D.) 11-06-038 the Commission set upper limits for each applicant of \$150,000 in year 1 and \$450,000 over three years, and also limited each subarea consortia in the Los Angeles region to the \$150,000 annual and \$450,000 three-year caps.⁷ Regardless of whether SB 1040 contains constraints on the amounts that may be awarded individual grant applicants, these are the budget limits set by the Commission in judiciously implementing the Consortia Grant Account. The Alternate Resolution should be rejected because it fails to conform to the requirements set forth in D.11-06-038. If the consortia parties disagree with the funding levels adopted in that decision, then they should file a petition for modification of D.11-06-038. However, DRA supports budget limits because: (1) the results of the proposed Consortia projects are not specifically identified; and (2) DRA wants the significant investment of ratepayer funds in the Consortia Grant Account and CASF overall to produce positive results for California’s citizens in the adoption of strong CASF projects in unserved and underserved areas.

³ Cal. Pub. Util. Code § 281(b)(1)(B).

⁴ Cal. Pub. Util. Code § 281(b)(3).

⁵ Cal. Pub. Util. Code § 281(b)(3).

⁶ Cal. Pub. Util. Code § 281(a).

⁷ D.11-06-038, *mimeo*, at 15, as modified by D.11-07-034.

III. THE COMMISSION SHOULD DENY THE ALTERNATE RESOLUTION BECAUSE IT EXCEEDS THE BUDGET LIMITS IN THE LOS ANGELES REGION AND WOULD PLACE THE CASF BUDGET IN JEOPARDY

In their comments, the three parties each point out that D.11-06-038, and D.11-07-034 which corrected errors,⁸ approved a modified funding approach for the Los Angeles region, but the comments do not acknowledge that in the Los Angeles region, each eligible umbrella consortium may seek funding only up to the adopted \$150,000 per year and \$450,000 three-year caps.² Since the LACBRBC is comprised of five subareas, the total first year budget should not exceed \$750,000 (5 x \$150,000), while the total three-year budget should not exceed \$2,250,000 (5 x \$450,000). Furthermore, nothing in these opening comments provides any support or new evidence detailing why the established budget limits should be exceeded, and why the requirements of D.11-06-038 should be ignored, especially given the fact that LACBRBC already has access to a significantly higher share of Consortia Grant Funds than any other region in the state. DRA continues to urge the Commission to reject the Alternate, which would give the LACBRBC \$770,000 in year 1 and \$2,310,000 total over three years, amounts that exceed the limits set out in D.11-06-038.

In addition, the Alternate acknowledges a concern that Consortia disbursements may exceed annual collections (\$25,000,000 per year, as discussed above) and thus delay payments to LACBRBC. The Alternate would place the CASF, which is comprised of ratepayers' money, in jeopardy of being fiscally mismanaged. As stated in DRA's opening comments, the Alternate would allocate over half (\$5.1 Million of the total \$10 Million) of the Consortia Grant Account funding available through 2015 to seven projects. DRA remains concerned that the Alternate would use a disproportionately large share of the available budget and urges the Commission to preserve more consortia funding for future year projects, recognizing that there are already seven additional project applications submitted to the funding process,¹⁰ and there will likely be more submittals between now and 2015.

⁸ Order Correcting Errors in Decision 11-06-038 at 1 (issued July 21, 2011). This order corrects non-substantive errors in certain attachments to D.11-06-038 and corrects certain wording errors regarding the Los Angeles region funding to clarify that the adopted annual and 3-year funding caps of \$150,000/\$450,000 were intended to apply to each separate umbrella consortium that seeks funding in the Los Angeles region.

² Ibid.

¹⁰ Draft Resolution at 9 and Alternate at 8.

IV. CONCLUSION

For the foregoing reasons, the Commission should reject the Alternate, which is clearly inconsistent with the requirements of D.11-06-038. The Commission should not allow the LACRBC to exceed annual and 3-year budget limits and put the CASF at risk. DRA also continues to urge the Commission to reject the Draft Resolution in order to correct discrepancies in the Draft Resolution budget numbers and provide greater detail on Communications Division's analysis. Parties should then be afforded the opportunity to comment on that corrected and revised Draft Resolution prior to final adoption.

Respectfully submitted,

/s/ KIMBERLY J. LIPPI

KIMBERLY J. LIPPI

Attorney for the Division of Ratepayer Advocates
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Phone: (415) 703-5822
Email: (415) 703-4492

November 21, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **“REPLY COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON DRAFT RESOLUTION T-17349 AND ALTERNATE RESOLUTION T-17349 FOR APPROVAL OF FUNDING FROM THE CALIFORNIA ADVANCED SERVICES FUND”** to the official service list in **R.06-06-028** and all **CASF applicants** and by using the following service:

E-Mail Service: sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

U.S. Mail Service: mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on **November 21, 2011** at San Francisco, California.

/s/ Margarita Lezcano
Margarita Lezcano

**Service List
Draft Res. T-17349
& CASF applicants**

cityattorney@ci.watsonville.ca.us
Phyllis.Whitten@ftr.com
mdozier@csufresno.edu
randylowe@dwt.com
chabran@cctpg.org
robert.swayze@laedc.org
jesus.g.roman@verizon.com
jeff@sdfutures.org
esther.northrup@cox.com
XLeonard@gmail.com
akrebs@csumb.edu
kjl@cpuc.ca.gov
bnusbaum@turn.org
david.discher@att.com
marg@tobiaslo.com
pacasciato@gmail.com
joshdavidson@dwt.com
smalllecs@cwclaw.com
lbest@contracostacouncil.com
douglas.garrett@cox.com
enriqueg@greenlining.org
sierratec@gmail.com
ben.hulet@mlode.com
ccase@atcaa.org
erin@solstice-gis.com
krustrum@co.tuolumne.ca.us
sandi.romena@gmail.com
teri@ShepherdsCrook.us
kelly_c@co.lake.ca.us
mike@ruralbroadbandnow.com
gregg@rredc.com
connie.stewart@humboldt.edu
karp@humboldt.edu
brent@sedcorp.biz
shance@atcaa.org
fpilot@caminofiber.net
michael@broadbandassoc.com
sheaton@rcrcnet.org
Bill.Mueller@valleyvision.org
tara.thronson@valleyvision.org
john@Spiralinternet.com

lrice@psrec.coop
dbforslund@gmail.com
kaljar@qnet.com
DWTCPUCDOCKETS@dwt.com
cmemerson@csuchico.edu
Christine.Burke@FTR.com
m.h.pokorny@ildmail.com
Susan.Odom@BNSF.com
don.eachus@verizon.com
jacque.lopez@verizon.com
Marcie.Evans@cox.com
dmrcandd@iwvisp.com
clenno@csumb.edu
Gladys.Palpallatoc@cetfund.org
rcosta@turn.org
agnes.ng@att.com
ramiz.rafeedie@att.com
maryliz.dejong@att.com
gblack@cwclaw.com
janewhang@dwt.com
Charlie.Born@ftr.com
plumasco@psln.com
aj1@cpuc.ca.gov
aba@cpuc.ca.gov
ayy@cpuc.ca.gov
cg2@cpuc.ca.gov
gvc@cpuc.ca.gov
mca@cpuc.ca.gov
mki@cpuc.ca.gov
nxb@cpuc.ca.gov
rhh@cpuc.ca.gov
tjg@cpuc.ca.gov
trp@cpuc.ca.gov
vf2@cpuc.ca.gov
xsh@cpuc.ca.gov
ztc@cpuc.ca.gov
twest@cenic.org
dmrcandd@iwvisp.com
mpimentel@ci.watsonville.ca.us
mdozier@csufresno.edu
emarzullo@sbrda.org

aortega@communityunion.org

drodriguez@ypiusa.org

lmb@wblaw.net

jesus.g.roman@verizon.com

esther.northrup@cox.com

srt@cpuc.ca.gov

cmailloux@turn.org

rcosta@turn.org

bnusbaum@turn.org

david.discher@att.com

michael.foreman@att.com

peter.hayes@att.com

Stephen.h.Kukta@sprint.com

thomas.selhorst@att.com

marg@tobiaslo.com

pacasciato@gmail.com

jclark@gmsr.com

mschreiber@cwclaw.com

SmallLecs@cwclaw.com

deyoung@caltel.org

suzannetoller@dwt.com

selbytelecom@gmail.com

tlmurray@earthlink.net

douglas.garrett@cox.com

jon@morenotrenching.com

mort@praxisfiber.com

pucservice@dralegal.org

cratty@comcast.net

Charlie.Born@ftr.com

lesla@calcable.org

beth.fujimoto@cingular.com

cindy.manheim@cingular.com

Phyllis.Whitten@ftr.com

kaljar@qnet.com

judypau@dwt.com

trevor@RoycroftConsulting.org

Johnj@Rapidlink.com

kmudge@Covad.com

lortega@communityunion.org

PHILILLINI@aol.com

don.eachus@verizon.com

jborchelt@gmail.com

mshames@ucan.org

Marcie.Evans@cox.com

lindab@stcg.net

md@sandiegobusiness.org

idolgonas@cenic.org

tff@cpuc.ca.gov

GKarish@millervaneaton.com

marcel@turn.org

gregory.castle@att.com

Kristin.L.Jacobson@sprint.com

michael.sasser@att.com

rudy.reyes@verizon.com

maryliz.dejong@att.com

nlubamersky@telepacific.com

gblack@cwclaw.com

mmattes@nossaman.com

John_Gutierrez@cable.comcast.com

ashm@telepacific.com

anitataffrice@earthlink.net

asj@calcable.org

jwakefield@covad.com

Joe.Chicoine@ftr.com

sheaton@rcrcnet.org

mcf@calcom.ws

alk@cpuc.ca.gov

ayo@cpuc.ca.gov

aba@cpuc.ca.gov

chc@cpuc.ca.gov

crs@cpuc.ca.gov

cg2@cpuc.ca.gov

dgw@cpuc.ca.gov

pod@cpuc.ca.gov

evw@cpuc.ca.gov

gvc@cpuc.ca.gov

kar@cpuc.ca.gov

kjl@cpuc.ca.gov

lah@cpuc.ca.gov

ma1@cpuc.ca.gov

mca@cpuc.ca.gov

mki@cpuc.ca.gov

nxb@cpuc.ca.gov

psp@cpuc.ca.gov

rwh@cpuc.ca.gov

trp@cpuc.ca.gov

tch@cpuc.ca.gov

xsh@cpuc.ca.gov

ztc@cpuc.ca.gov