



FILED

02-18-11

02:02 PM

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Consider
Modifications to the California Advanced
Services Fund Including Those Necessary to
Implement Loan Program and Other
Provisions of Recent Legislation

R.10-12-008

(Filed December 16, 2010)

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 COMPANY (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 ORDER INSTITUTING RULEMAKING

E. Garth Black
Mark P. Schreiber
Patrick M. Rosvall
COOPER, WHITE & COOPER LLP
201 California Street, 17th Floor
San Francisco, California 94111
Telephone: (415) 433-1900
Facsimile: (415) 433-5530

February 18, 2011

Attorneys for the Small LECs

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1 **I. INTRODUCTION.**

2 Pursuant to Rule 6.2 of the California Public Utilities Commission's ("Commission") Rules
3 of Practice and Procedure ("Rules"), Calaveras Telephone Company (U 1004 C), Cal-Ore
4 Telephone Co. (U 1006 C), Ducor Telephone Company (U 1007 C), Foresthill Telephone Co.
5 (U 1009 C), Happy Valley Telephone Company (U 1010 C), Hornitos Telephone Company
6 (U 1011 C), Kerman Telephone Co. (U 1012 C), Pinnacles Telephone Co. (U 1013 C), The
7 Ponderosa Telephone Co. (U 1014 C), Sierra Telephone Company, Inc. (U 1016 C), The Siskiyou
8 Telephone Company (U 1017 C), Volcano Telephone Company (U 1019 C) and Winterhaven
9 Telephone Company (U 1021) (the "Small LECs") hereby reply to the issues raised in opening
10 comments on the Order Instituting Rulemaking to Consider Modifications to the California
11 Advanced Services Fund ("CASF") Including Those Necessary to Implement Loan Program and
12 Other Provisions of Recent Legislation ("OIR").

13 Opening comments were filed by a variety of interested parties, including telephone
14 companies,¹ cable companies,² consumer groups,³ the California Emerging Technology Fund
15 ("CETF") regional partners,⁴ and other regional and community groups focused on broadband
16 adoption and deployment.⁵ The comments address a wide spectrum of issues, ranging from the
17 role of Rural and Regional Consortia ("Consortia"), the structure of the Broadband Infrastructure
18 Revolving Loan Program ("CASF Loan Program"), the application process and scoring criteria for
19 the Broadband Infrastructure Grant Program ("CASF Grant Program"), the types of entities that

20 _____
21 ¹ Telephone companies offering comments included: AT&T California and its affiliates ("AT&T"), Verizon California
22 Inc. ("Verizon"), Frontier Communications of California and its affiliates ("Frontier"), DTS of CA, Inc. ("DTS"), and the Small
23 LECs. DTS is a satellite-based provider that has sought authority to be a Small ILEC in all of the unserved areas of California.

24 ² The cable companies offering comments included: Cox Communications ("Cox") and Comcast Phone of California,
25 LLC ("Comcast").

26 ³ The consumer groups offering comments included: the Division of Ratepayer Advocates ("DRA"), The Utility Reform
27 Network ("TURN"), and the Greenlining Institute ("Greenlining").

28 ⁴ Several significant comments were filed by regional groups associated with the CETF, including: the California
Partnership for the San Joaquin Valley ("SJV Partnership"), the Sierra Economic Development Corporation ("SEDC"), the
Amador-Tuolumne Community Action Agency ("A-TCAA"), Shepherds Crook Enterprises ("Shepherds Crook"), the Contra Costa
Council, CSU-Monterey Bay ("CSU-MB"), Valley Vision, and the California Center for Rural Policy ("CCRP").

⁵ Other regional and community groups offering comments included: the Corporation for Education Network Initiatives
In California ("CENIC"), the Regional Council of Rural Counties ("RCRC"), Spiral Internet/Nevada County Connected ("Nevada
County Connected"), and Camino Fiber Network Cooperative, Inc. ("Camino Fiber").

1 should be eligible for CASF funding, the funding percentages and definitions underlying the
2 programs, and the interplay between broadband adoption activities and broadband deployment.
3 The multiplicity of issues presented by the opening comments makes it difficult to meaningfully
4 comment on every permutation of every suggestion, so the Small LECs' reply comments are
5 focused on the issues of most significance to small, rural providers, and on developing an orderly
6 process for addressing changes to the CASF program.

7 Once the Commission has digested the opening comments, the Small LECs believe that the
8 Commission should take some additional procedural steps before reaching any conclusions
9 regarding revisions to the program. First, the Commission should issue a further scoping ruling
10 that summarizes the parties' proposals from comments on the OIR. In that scoping ruling, the
11 Commission should outline the specific changes to the program that are under consideration.
12 Second, the Commission should convene a workshop to discuss those specific proposed changes.
13 Third, following the workshop, parties should be permitted to offer an additional round of
14 comments. The Small LECs believe that this process will result in greater consensus amongst the
15 parties and an enhanced understanding by all of how the three funding mechanisms of the CASF
16 program will interact under the various proposals. A methodical approach on the front end of this
17 proceeding will avoid confusion amongst applicants once the new program is established.

18 The CETF regional partners and other community groups offer strong and thoughtful
19 comments regarding the role of Consortia in accessing and directing the Consortia funding
20 authorized by Public Utilities Code Section 281(d). The Small LECs support the overall vision
21 articulated by the CETF-associated groups that there should be a single, publicly-recognized
22 Consortium for each region of California. The regional Consortia should have essentially three
23 functions in connection with the CASF: (1) to work to close the "digital divide" through demand-
24 focused initiatives and public awareness campaigns; (2) to provide recommendations to the
25 Commission regarding the areas where broadband deployment is most needed; and (3) to work
26 with CASF grant and loan recipients to coordinate demand stimulation efforts with facilities
27 deployment. The CETF in particular has tremendous experience in these areas, and the

1 Commission should enlist the CETF to help guide the priorities for Consortia. The Commission
2 should not be involved in selecting Consortia; it should defer to the CETF and the regional
3 organizations themselves to determine how best to organize themselves in applying for Consortia
4 status.

5 While Consortia funding should be adoption-focused, and participation should be open to
6 certificated and uncertificated entities, the CASF Grant and Loan Programs should be devoted
7 solely to infrastructure deployment. These aspects of the CASF should be available only to
8 certificated wireline or wireless providers. To ensure that the demand-side and supply-side goals
9 of the CASF mesh without unnecessarily duplication, the Commission should keep the Consortia
10 program separate from the CASF Grant and Loan Programs. For similar reasons, CETF should
11 not be given a formal role in the review process for CASF infrastructure applications. CETF
12 should be permitted to comment on proposals like any other party, and the Small LECs believe
13 that CETF's input will be of significant value. However, CETF should not be given any formal
14 decision-making authority or special review role, as some of the CETF partners have proposed.

15 Regarding the financial mechanics of the loan program, the Small LECs agree with the
16 SEDC that the Commission should associate itself with a lender who has expertise in dealing with
17 loans. The Commission should define the basic terms of CASF loans, and then the process should
18 be administered by that Commission-designated lender. Several parties suggested that the prime
19 rate be used for CASF loans, but the Small LECs believe that the lower 90-day financial
20 commercial paper rate would be more effective in fostering participation in the program. The
21 Commission should annually establish maximum loan amounts. The term of CASF loans should
22 generally be 10 years, as the Small LECs suggested in their opening comments. Applicants for
23 infrastructure funding should be permitted to seek either loan funding, or grant funding, or both.
24 Requests for grant and loan funding should not be separate, as the SEDC suggests. Upon
25 completion of the loan program, unless it is extended by further legislation, the loan funds should
26 be returned to the ratepayers from whom they were collected.

27 The opening comments reflect considerable consensus regarding many aspects of the

1 CASF Grant Program. Many parties noted that the program contributions should be increased
2 substantially, and several parties suggested that 75%-80% would be an appropriate standard to
3 help the program reach the remaining unserved and underserved communities. Many of the
4 opening comments also note that the benchmark speeds used for identifying CASF-eligible areas
5 should be increased. Although some parties support opening up the Grant and Loan Programs to
6 non-certificated entities, the accountability issues raised in the opening comments militate strongly
7 in favor of limiting such funding to Certificate of Public Convenience and Necessity ("CPCN")
8 holders and Commission-regulated wireless registrants. A variety of proposals were made for
9 how to improve the scoring criteria, but there is general consensus amongst most parties that
10 additional steps should be taken to make the process more transparent.

11 The Commission should resist proposals that would inject requirements into the grant or
12 loan application process that would stifle applications. If the Commission were to impose new
13 open access or net neutrality requirements beyond those in existing law and Federal
14 Communications Commission ("FCC") policy, that in itself could dramatically reduce the number
15 of applications. Similarly, the Commission must retain sufficient confidentiality protections
16 regarding the specifics of proposed projects or providers may be unwilling to present specific
17 proposals. Transparency is certainly important, but the Commission need only provide the public
18 and interested parties with enough details about a project to be able to meaningfully evaluate the
19 scoring criteria. The network design and specific locations of facilities – and other proprietary
20 material – should remain confidential. The Commission should also avoid imposing specific
21 "adoption" requirements, cost ceilings, or price controls on CASF projects. These types of
22 regulations would create significant disincentives to broadband deployment, and undermine the
23 goals of the CASF program.

24 Having reviewed the opening comments, the Small LECs continue to believe that their
25 proposal in opening comments will provide a reasonable and balanced way to target the areas that
26 are most in need of broadband investment while ensuring fairness to program participants. The
27 Small LECs urge the Commission to adopt their proposed modifications to the scoring criteria and

1 the definitions of "unserved" and "underserved," as well as the proposal to increase the speed
2 threshold to a combined 5 MB/s figure. These items and the other issues raised in opening
3 comments are discussed in detail below.

4 **II. CONSORTIA FUNDING SHOULD BE FOCUSED ON ADOPTION AND**
5 **DEMAND STIMULATION, WHILE LOAN AND GRANT FUNDING SHOULD BE**
6 **RESERVED FOR INFRASTRUCTURE DEPLOYMENT.**

7 In allocating funding under the CASF program, the Commission should maintain a firm
8 division between Consortia funding and infrastructure funding. While grant recipients certainly
9 should work with Consortia, and Consortia should offer their input on proposed grant projects, the
10 Commission should draw a bright line between funds devoted to adoption, and funds devoted to
11 infrastructure investment. Under SB 1040, certain CASF funds have now been designated for
12 "broadband deployment activities other than the capital costs of facilities." Pub. Util. Code §
13 281(d). Those monies are specifically tied to Consortia, and based on the opening comments, the
14 CETF's regional partners have many good ideas about how to direct those funds. However,
15 Consortia should not also be eligible for CASF loans or CASF grants. Consistent with their
16 separate treatment in Public Utilities Code Section 281, grant and loan funds should be reserved
17 exclusively for infrastructure investments. As the Contra Costa Council observed,

18 [a]lthough there is definitely a dynamic relationship between deployment and
19 adoption, and adoption is a huge challenge in California, CASF and SB 1040
20 implementation need to remain focused on deployment. *Contra Costa Council*
21 *Opening Comments*, at p. 3.

22 Consortia and their constituent members should be free to partner with CPCN-holders to seek
23 funding under the CASF Grant or Loan Programs, but those should be separate partnerships driven
24 by a certificated lead applicant who will spearhead the infrastructure deployment. To ensure that
25 both demand-side activities and infrastructure investments receive due attention, the Consortia
26 funding determinations should be made separately from any decisions about CASF Grant or Loan
27 awards.

28 Although the Small LECs appreciate the CETF partners' enthusiasm and willingness to
engage on infrastructure deployment issues, it would not be appropriate for the CETF or its

1 partners to have a formal role in the process of reviewing CASF grant or loan applications.
2 Several of the CETF partners suggest that the CETF or its partners should be part of the
3 Commission's formal review process. *See, e.g., A-TCAA Opening Comments*, at p. 13; *SJV*
4 *Partnership Opening Comments*, at p. 20; *Shepherds Crook Opening Comments*, at p. 14.
5 Injecting these entities into the application process would create confusion and possibly
6 compromise the transparency of the Commission's review by permitting the subjective views of
7 Consortia members to substitute for objective scoring criteria. Moreover, while the Consortia
8 members may have important insights about how to prioritize broadband projects, the
9 technological and network architecture expertise resides with the applicant companies, many of
10 whom would view these specifics as proprietary. The Commission should encourage all
11 applicants for grant or loan funding to work proactively with the CETF and with the Consortia
12 members, but these entities should not have a formal role in scoring applications. Like all parties,
13 the CETF and the Consortia should be permitted to comment on proposed applications once a
14 project is preliminarily scored and proposed for adoption in a Commission resolution or another
15 procedural vehicle upon which interested parties can comment.

16 The Small LECs appreciate the insights that the CETF and its regional partners provide
17 about how to target broadband infrastructure resources, and these entities also offer many
18 constructive procedural suggestions in their comments. Consortia and infrastructure applicants
19 should work informally toward their common goal of increased deployment and enhanced
20 adoption. However, neither Consortia nor entities related to Consortia should have any special
21 role in the CASF Grant or Loan Program application process. The decision-making authority over
22 grant and loan applications should reside with the Commission.

23 **III. TO ENSURE THAT RECIPIENTS REMAIN ACCOUNTABLE TO THE**
24 **COMMISSION, GRANT AND LOAN APPLICANTS SHOULD BE REQUIRED TO**
25 **HOLD CPCNS OR WIRELESS REGISTRATION CERTIFICATES.**

26 The opening comments provide compelling reasons to continue limiting CASF grant and
27 loan funding to entities who hold CPCNs or wireless registration certificates. Most importantly,
the Commission has jurisdiction over these entities, and has direct mechanisms for ensuring that

1 these entities honor their commitments under the CASF program. As DRA notes, "... simply
2 placing conditions upon an unregulated utility alone does not necessarily confer jurisdiction on the
3 Commission to enforce those conditions, even if those conditions are agreed to by the unregulated
4 entity." *DRA Opening Comments*, at p. 5. Moreover, companies who are not certificated are "not
5 subject to the Commission's consumer protection requirements and standards." *Frontier Opening*
6 *Comments*, at p. 6. In addition, holders of CPCNs in particular have "demonstrated their financial,
7 managerial, and technical fitness to provide service" by virtue of completing the CPCN review
8 process, thereby making them categorically better candidates for funding. Limiting funding to
9 properly registered entities also preserves a nexus between the regulated entities who collect the
10 CASF funds and the entities who are eligible to qualify for this funding. Expanding eligibility to
11 non-CPCN holders would be unfair to regulated utilities and their ratepayers.

12 Many of the CETF partners and some consumer groups urge the Commission to make loan
13 and grant funding available to unregistered entities. *See, e.g., A-TCAA Opening Comments*, at p.
14 12; *CCRP Opening Comments*, at p. 7; *SJ Partnership Opening Comments*, at p. 18. Shepherds
15 Crook even suggests that "[n]ot for profit entities such as local governments and consumer
16 cooperatives should . . . be given priority" for CASF loan funding. *Shepherds Crook Opening*
17 *Comments*, at p. 11. These parties offer no explanation for how the Commission could reasonably
18 ensure accountability when extending funding to unregulated entities, nor do any of them address
19 the fundamental fairness issue raised by allocating infrastructure funding collected from regulated
20 entities largely to unregulated entities. As discussed above and in the Small LECs' Opening
21 Comments, government entities, community-based organizations, and CETF's regional partners
22 should be free to partner with CPCN holders on infrastructure projects, but their direct funding
23 should be available only through the Consortia funding mechanism under Public Utilities Code
24 Section 281(d). SB 1040 does not require that unregulated entities be eligible for infrastructure
25 funding, and no party has provided a compelling reason for the Commission to expand eligibility
26 to all entities, let alone a justification that would overcome the difficulties in enforcing the grant or
27 loan terms on unregulated entities.

1 **IV. FUNDING OF UP TO 80% SHOULD BE AVAILABLE UNDER THE GRANT AND**
2 **LOAN PROGRAMS TO ENSURE THAT SUFFICIENT INCENTIVES EXIST FOR**
3 **APPLICANTS TO REACH THE MOST REMOTE UNSERVED AND**
4 **UNDERSERVED AREAS.**

5 The interested parties offer strong support for increasing the CASF program contributions
6 to broadband infrastructure projects. As AT&T observes, "the 40% cap . . . [will] unduly hamper
7 the Commission's efforts to expand broadband access." *AT&T Opening Comments*, at p. 1. Many
8 parties noted the limited number of applications received for non-matching CASF grants under the
9 program to date. It is clear from the opening comments that a 40% contribution from the CASF is
10 an insufficient proportion to allow companies to make a business case for installing broadband in
11 remote, sparsely-populated areas where broadband investment is most needed to bridge the digital
12 divide.⁶ Frontier reflects that it "considered four additional broadband deployment projects that
13 could not be justified at the 40 percent contribution level." *Frontier Opening Comments*, at p. 3.
14 Similarly, Verizon provides an extensive analysis of the "net present value" calculation used in
15 determining how to direct its investments, and concludes that projects at a 40% funding level are
16 very unlikely to be pursued. *Verizon Opening Comments*, at p. 5. As CENIC suggests, "there are
17 some areas where broadband infrastructure will simply not be built without the assistance of
18 public funds and without policies that recognize the importance of such deployment." *CENIC*
19 *Opening Comments*, at p. 3. It is clear that 40% contribution from the CASF will not be sufficient
20 to prompt investment in the hardest-to-reach areas of California.

21 Several parties support an increase of the funding cap to 75% or 80%. As stated in
22 Verizon's comments, "Verizon . . . continues to believe that only funding at [an 80%] level will
23 attract sufficient bidders to invest in uneconomic unserved areas." *Verizon Opening Comments*, at
24 p. 5; see also *Frontier Opening Comments*, at p. 3 (supporting 75% funding contribution); *CENIC*
25 *Opening Comments*, at p. 3 (supporting 80% funding contribution); *RCRC Opening Comments*, at

26 ⁶ As the Small LECs pointed out in their opening comments, the Commission can also
27 facilitate additional broadband deployment in rural areas by clarifying that rate-of-return carriers
28 can include their contributions to CASF-approved projects in rate base. *Small LECs Opening*
Comments, at pp. 3-4.

1 p. 3 (noting that "many transportation infrastructure projects require a 20 percent match for project
2 and lower that threshold to 10 percent for certain high priority policy areas."); *Camino Fiber*
3 *Opening Comments*, at p. 6 ("There should be no set funding cap."). Raising the available funding
4 to 80% for grants or loans (or a mix of grants and loans) will provide the proper incentives to
5 encourage applications to serve the most difficult to serve underserved areas that the CASF is now
6 targeting.

7 Only Comcast appears to oppose an increase in the funding cap, on the grounds that
8 "applicants [should] be at risk for the majority of the project, and then act accordingly in their self-
9 interest and according to normal business practices." *Comcast Opening Comments*, at p. 4. While
10 the concept that applicants should fund the majority of projects may have made sense in the
11 abstract when the CASF was originally formulated, the Commission's experience under the
12 program has shown that a change in policy is required to reach the remaining underserved and
13 unserved areas. A significant increase in the funding threshold to 80% will best promote the goals
14 of the reinvigorated CASF program under SB 1040.

15 **V. THE SMALL LECs' PROPOSED ADJUSTMENTS TO THE SPEED**
16 **THRESHOLDS AND THE DEFINITIONS OF UNSERVED AND UNDERSERVED**
17 **AREAS REPRESENT A BALANCED APPROACH TO TARGET PARTS OF**
18 **CALIFORNIA THAT ARE IN NEED OF FURTHER INFRASTRUCTURE**
19 **INVESTMENT.**

18 Having reviewed the opening comments of interested parties, the Small LECs remain
19 convinced that their proposed revisions to the definitions of "unserved" and "underserved" would
20 achieve an appropriate balance between attracting investment to areas in need of broadband
21 facilities and ensuring that the investments made are consistent with the forward-looking needs of
22 rural areas. The Small LECs suggested the adoption of the definitions from the American
23 Recovery and Reinvestment Act ("ARRA"), with two critical sets of adjustments. First, to give
24 more flexibility to existing providers to meet the availability threshold, the Small LECs suggested
25 a combined upload and download speed of 5 MB/s. Second, to avoid confusion and remove
26 irrelevant considerations from the analysis of whether areas are "unserved" or "underserved," the
27 Small LECs suggested the removal of any triggers based on advertising or subscribership. The

1 Commission should focus solely on availability, and direct its funding toward areas where
2 availability is sub-par.

3 Many parties offer support for increased speed thresholds. *See, e.g. CENIC Opening*
4 *Comments*, at p. 6; *Greenlining Opening Comments*, at p. 5; *DRA Opening Comments*, at p. 7;
5 *Nevada County Connected*, at p. 2. These parties note the goals of the National Broadband Plan,
6 which establishes an objective for every household in the country to have at least 4 MB/s service
7 by the year 2020. The Small LECs think that a 4 MB/s download speed will be plainly sub-par by
8 2020, and the Small LECs urge the Commission to promote policies that will not leave rural areas
9 on the wrong side of the "digital divide." However, for the purpose of allocating CASF funding
10 and low-cost debt based on present needs, a 5 MB/s combined threshold would be reasonable.

11 Some parties argue that establishing a higher speed bar will encourage duplicative projects
12 in areas that already have broadband coverage, but at lower speeds. *See AT&T Opening*
13 *Comments*, at p. 2. While the Small LECs are sensitive to these concerns, the Small LECs believe
14 that if the test is focused solely on availability and not on advertising or adoption, the 5 MB/s
15 combined figure will be a reasonable way to identify "unserved" and "underserved" areas. The
16 Commission should still prioritize funding in areas where there is no broadband service, provided
17 that there are sufficient households in the area to merit a project. Raising the threshold to 5 MB/s
18 will give the Commission the discretion to consider additional projects, but it should not mean that
19 the Commission will fund projects in areas with some broadband over areas with no broadband.
20 Similarly, the Commission should retain discretion to favor projects with higher speeds over those
21 with lower speeds even if multiple competing projects meet the threshold. On balance, the Small
22 LECs believe that a 5 MB/s combined threshold will assist the Commission in allocating its
23 funding resources to areas that have been left behind – or which soon will be left behind – with
24 respect to broadband investment.

25 DTS offers comments stating that "the Commission should not define 'unserved' area in
26 terms of the presence or absence of satellite service." *DTS Opening Comments*, at p. 2. The Small
27 LECs do not understand what DTS is proposing. If DTS is suggesting that all areas where satellite

1 broadband service is available should be designed as "served," then there might be no "unserved"
2 areas in California. However, if DTS is simply acknowledging that the Commission has not
3 considered satellite broadband availability when determining whether an area is "served," the
4 Small LECs agree with this observation. The Commission should continue to exclude satellite
5 broadband from the types of services that can render an area "unserved" or "underserved" as
6 opposed to "served."

7 **VI. THE SCORING CRITERIA SHOULD BE REFOCUSED TO PRIORITIZE THE**
8 **LONG-TERM VIABILITY AND SCALABILITY OF PROJECTS, AND TO**
9 **ENSURE THAT THE LARGEST NUMBER OF HOUSEHOLDS AND ANCHOR**
10 **INSTITUTIONS CAN BE REACHED WITH AVAILABLE CASF**
11 **INFRASTRUCTURE FUNDING.**

12 The opening comments provide strong support for the Small LECs' proposal to include a
13 new scoring criterion to assess the "long-term financial and technical viability" of projects. *Small*
14 *LECs Opening Comments*, at p. 15. Several parties urged the Commission to place greater
15 emphasis on ensuring that projects will remain viable after they are completed. TURN observes
16 that "[i]t is imperative that the Commission performs its due diligence to confirm that applicants
17 are financial sound and have sufficient expertise to successfully construct and operate a broadband
18 service." *TURN Opening Comments*, at p. 5. CENIC similarly remarks that "prior experience in
19 installation and operation/management of these networks would ensure that these projects are
20 constructed on time and managed efficiently." *CENIC Opening Comments*, at p. 7. DTS also
21 echoes the Small LECs' concerns, noting that "[t]he relative ability of applicants to provide service
22 to all present and future subscribers bears on the efficiency, scalability, and overall value of any
23 given proposal." *DTS Opening Comments*, at p. 3. These factors should be critical to the
24 Commission's evaluation of any proposed project.

25 Another important consideration to the interested parties is how to evaluate an applicant's
26 proposed "service area" against other proposed "service areas," whether those proposals are in
27 competing applications or parallel applications for the same limited funding. DRA addresses this
28 issue, arguing that the Commission should prioritize "less densely populated areas." *DRA*
Opening Comments, at p. 11. The Small LECs do not believe that this is the correct focus. Rather

1 than funding broadband deployment in areas where very few people live, the Commission should
2 first identify projects that would benefit a higher number of unserved or underserved households.
3 As CENIC suggests, priority should also be given to projects that will serve "anchor institutions,"
4 such as hospitals, schools, or other important government or community buildings. *CENIC*
5 *Opening Comments*, at p. 5. All of these considerations can be assessed using the refined "service
6 area" criterion that the Small LECs have proposed.

7 The Small LECs urge the Commission to consider the scoring criteria presented in the
8 Small LECs' opening comments. *See Small LEC Opening Comments*, at p. 15. These scoring
9 criteria address many of the concerns with the previous scoring system based on the parties'
10 experience in working with the previous CASF application process.

11 **VII. THE APPLICATION REVIEW PROCESS SHOULD INCLUDE NOTICE TO**
12 **INTERESTED PARTIES AND AN OPPORTUNITY TO MEANINGFULLY**
13 **COMMENT ON THE SCORING CONCLUSIONS THAT THE COMMISSION**
14 **STAFF HAS RECOMMENDED.**

15 The parties offer varying suggestions about how to structure the CASF application review
16 process, including whether and to what extent parties should be permitted to comment on
17 proposed grant or loan awards. DRA and some others argue that the process must be "fully
18 transparent," but there does not appear to be a consensus amongst the comments as to what "full
19 transparency" would entail. *See DRA Opening Comments*, at pp. 7-9. Some of the CETF partners
20 and others suggest that a full review by all parties must occur at the application stage. *See, e.g., A-*
21 *TCAA Opening Comments*, at p. 13; *SJV Partnership Opening Comments*, at p. 20; *Shepherds*
22 *Crook Opening Comments*, at p. 14. In crafting the application process, the Commission should
23 be careful to balance the need for a streamlined application process with the countervailing interest
24 in allowing participation by the public and interested parties.

25 The Small LECs agree with DRA that the current process provides for inadequate
26 transparency, but DRA's proposal for "full transparency" goes too far. The Small LECs do not
27 believe that sharing all aspects of applications with all interested parties would best serve the goals
28 of the CASF. Rather, when a Commission receives an application, it should provide notice to all

1 those on the service list for this proceeding, and to any Carriers of Last Resort ("COLR") covering
2 the territories where the project is proposed. A notice of the application should also be posted to
3 the Commission's website. The name of the applicant, the technology employed, and the service
4 territory to be covered should also be provided. Having received that information, any affected
5 COLR should be permitted to protest the application on the grounds that the area is already
6 sufficiently served, or submit a competing application, or both.

7 The Commission should evaluate the application and any protest or competing application,
8 and then release a Draft Resolution with recommendations and specific proposed scores. The
9 Draft Resolution should be served on all parties on the service list for this proceeding and posted
10 to the Commission's website. Any party and/or any member of the public should be permitted to
11 offer comment. To allow for meaningful comment, the Draft Resolution must contain sufficient
12 detail to permit the scoring criteria and the proposed scores to be understood. Absent that
13 information, the process will not be transparent, and the scores will not be subject to reasonable
14 public input. A process such as described herein would provide for sufficient transparency
15 without revealing proprietary company information or bogging down the Commission's
16 consideration of grant and/or loan proposals.

17 **VIII. THE COMMISSION SHOULD REJECT PROPOSED REQUIREMENTS AND**
18 **SUGGESTED SCORING CRITERIA THAT WOULD DISCOURAGE**
19 **APPLICATIONS FOR GRANT OR LOAN FUNDING.**

20 Some parties' comments propose injecting requirements into the CASF Grant or Loan
21 Programs that would render the process overly cumbersome or expose providers to unreasonable
22 regulatory risks that would discourage applications. First, the Commission should reject
23 suggestions from DRA and Greenlining that confidentiality should be abandoned entirely in
24 connection with CASF applications. *See DRA Opening Comments*, at pp. 8-9; *Greenlining*
25 *Opening Comments*, at p. 5. As Verizon warns, if all aspects of CASF applications were made
26 public, applicant companies could be placed at an unfair business disadvantage. *Verizon Opening*
27 *Comments*, at p. 8. Contrary to DRA's assertions, the Commission routinely provides protection
28 for confidential business information under Public Utilities Code Section 583 and General Order

1 ("G.O.") 66-C. These authorities are not at odds with the California Public Records Act (Cal.
2 Gov. Code § 6250, *et seq.*). Rather, the Commission has developed a public records policy that
3 harmonizes Public Utilities Code Section 583 and G.O. 66-C with the California Public Records
4 Act. The confidentiality conferred by those authorities has often protected proprietary information
5 in "public records" held by the Commission. This should remain the case in connection with
6 CASF applications.

7 Second, the imposition of state-specific open access or net neutrality obligations that
8 exceed those under current law and public policy would create a strong disincentive for providers
9 to file CASF applications. As AT&T observes, "[a]nything the Commission does in this area that
10 is different from the resolution of these issues at the federal level will only drive investment away
11 from California, and will deprive those without any broadband access from any improvement."
12 *AT&T Opening Comments*, at p. 2. Some of the consumer groups and community organizations
13 offer general support for the notion of net neutrality, but these parties fail to offer specific
14 proposals. *See DRA Opening Comments*, at 15; *TURN Opening Comments*, at p. 9; *Contra Costa*
15 *Council Opening Comments*, at p. 13. These comments misapprehend the incentives under which
16 providers would install facilities to unserved or underserved areas. The initial investment costs of
17 facilities for a grant project would be funded in part by the CASF, but the applicants are
18 responsible for the maintenance costs and ongoing service costs of providing the service to
19 customers. The broadband networks to be built using CASF funds are not "public facilities;" they
20 are facilities owned by privately-held public utilities. If the Commission were to impose open
21 access and net neutrality obligations beyond those that apply to all broadband facilities, it could
22 simply be too risky to invest, especially without knowing what those requirements would be. As
23 DTS notes, new sharing requirements would "penalize first generation actors" and "impede
24 investment." *DTS Opening Comments*, at p. 3. This is exactly the opposite of what the CASF is
25 intended to accomplish.

26 Third, attempts to regulate broadband pricing as a condition of accepting CASF funding
27 would likely reduce interest in the program. DRA proposes that rate caps on broadband provided

1 over CASF-funded facilities should be mandatory for two years. *DRA Opening Comments*, at p. 6.
2 As Verizon succinctly states, "[t]he Commission cannot regulate the prices of broadband providers
3 and should not impose a cap on monthly rates and/or require waiver of installation and other
4 charges." *Verizon Opening Comments*, at p. 14. More generally, any attempt for the Commission
5 to substitute its own pricing schedule for the prices that the market will bear would result in
6 significant market uncertainties and eccentricities. Frontier correctly points out that "[n]ot all
7 areas have the same market conditions." *Frontier Opening Comments*, at p. 9. It would be
8 extraordinarily difficult and intrusive for the Commission to attempt to regulate broadband rates,
9 and doing so would certainly reduce CASF applications. DRA does not properly account for the
10 negative impact that its two-year rate cap would have on interest in the program.

11 Fourth, the Commission should not explicitly require CASF funding recipients to have a
12 plan for encouraging adoption. As AT&T observes, "CASF recipients invest their own money and
13 have every incentive to maximize subscribership in any way possible . . . to maximize their
14 return." *AT&T Opening Comments*, at p. 3. It would not make sense for an applicant to seek
15 CASF funding, and then not take all reasonable steps to encourage potential customers to
16 subscribe. The comments suggesting that specific adoption measures must be imposed on CASF
17 grants are misplaced. *See, e.g. DRA Opening Comments*, at p. 16; *TURN Opening Comments*, at
18 p. 9. The Small LECs expect that funding recipients will have every incentive to work with
19 regional Consortia to identify specific demand-related issues in areas where CASF-funded
20 facilities are to be deployed. Indeed, this is precisely what the regional Consortia are designed to
21 address, and they will receive separate funding for that purpose. It could make sense to include a
22 general statement in CASF awards to the effect that fund recipients agree to work with the
23 regional Consortia to address adoption. However, no specific requirements should be imposed.
24 Any "one size fits all" mandate in this area will discourage applications.

25 **IX. THE COMMISSION SHOULD WORK WITH AN EXPERIENCED LENDING**
26 **INSTITUTION TO MANAGE THE LOAN PROGRAM, AND LOANS**
27 **SHOULD BE STRUCTURED TO ENCOURAGE APPLICATIONS.**

28 Several of the comments from the consumer groups and community-based organizations

1 include constructive suggestions regarding the mechanics of the CASF Loan program. The Small
2 LECs agree with the SEDC that the Commission should associate itself with an experienced
3 lender to address financing issues associated with CASF loans. As SEDC observes, "the CPUC is
4 in the regulatory business, not the lending business." *SEDC Opening Comments*, at p. 6. The
5 Small LECs also support TURN's suggestion that a maximum loan amount should be established
6 such that no single loan will deplete the fund. *TURN Opening Comments*, at p. 4. However,
7 contrary to TURN's proposal, the Small LECs believe that the 90-commercial paper rate (currently
8 .27%) should be employed rather than the higher "prime rate" (currently 3.25%). If the purpose of
9 the CASF Loan program is to provide attractive funding that cannot be found elsewhere, the
10 Commission should offer those loans at a significantly discounted rate. The term of any loan
11 should be evaluated on a case-by-case basis, but 10 years would be an appropriate benchmark.
12 *See Small LECs Opening Comments*, at p. 9. The Small LECs do not believe that it would be in
13 the best interests of the program to encourage "churn" with insufficient repayment periods, as
14 TURN suggests. *TURN Opening Comments*, at p. 5.

15 The SEDC raises an important issue regarding the CASF loans: what should be done with
16 the loan funds upon conclusion of the CASF Loan Program? *SEDC Opening Comments*, at p. 6.
17 The Small LECs believe that the funds should be returned through a surcredit to telephone
18 company ratepayers, since those ratepayers are the source of the funds.

19 **X. THE COMMISSION SHOULD RELY ON THE CETF AND ITS REGIONAL**
20 **PARTNERS TO DEFINE THE PRIORITIES FOR AND THE DISTRIBUTION OF**
21 **FUNDING TO THE CONSORTIA.**

22 The CETF partners offered many detailed and useful comments about the types of
23 activities that the regional Consortia would undertake, and how they might allocate their funding
24 under Public Utilities Code Section 281(d). CETF has exercised significant leadership in this
25 area, and the Commission should defer in large part to CETF's experience regarding how to
26 structure and formulate Consortia. As many parties observe, the Commission should not itself be
27 involved in gathering parties and forming Consortia. The CETF and the community-based
organizations themselves will do that in the most efficient way possible to suit their particular

1 goals and circumstances, and the needs of each region. The Small LECs look forward to
2 reviewing the recommendations from the CETF and their partners in further detail, and to working
3 with the CETF on adoption projects in the future.

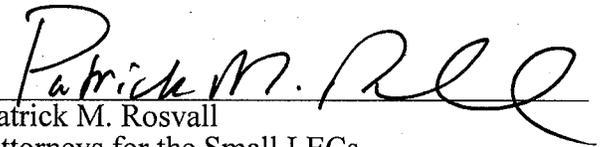
4 **XI. CONCLUSION.**

5 The Small LECs urge the Commission to consider the above comments as it formulates the
6 terms of the revised CASF program and implements SB 1040. The Small LECs will remain
7 engaged on the important issue of bringing broadband to unserved and underserved areas, and the
8 Small LECs will look for further opportunities to work with the Commission on CASF projects in
9 the future. The Small LECs reserve the right to augment or modify their position in response to
10 the reply comments filed by other parties, or in response to additional information or perspectives
11 offered in the course of this proceeding.

12 Dated this 18th day of February, 2011, at San Francisco, California.

13 Respectfully submitted,

14
15 E. Garth Black
16 Mark P. Schreiber
17 Patrick M. Rosvall
18 COOPER, WHITE & COOPER LLP
19 201 California Street
20 Seventeenth Floor
21 San Francisco, CA 94111
22 Telephone: (415) 433-1900
23 Telecopier: (415) 433-5530

24
25
26
27
28 By: 

Patrick M. Rosvall
Attorneys for the Small LECs

1
2
3
4
5
6
7
8
9
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17
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28

CERTIFICATE OF SERVICE

I, Martin Spence, declare:

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is COOPER, WHITE & COOPER LLP, 201 California Street, 17th Floor, San Francisco, CA 94111.

On February 18, 2011, I served a true copy of the:

REPLY COMMENTS OF

- CALAVERAS TELEPHONE COMPANY (U 1004 C)**
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 - VOLCANO TELEPHONE COMPANY (U 1019 C)**
 - WINTERHAVEN TELEPHONE COMPANY (U 1021 C)**
- (the "SMALL LECs")

ON ORDER INSTITUTING RULEMAKING

By emailing a true and correct searchable copy thereof in Adobe Acrobat PDF format to the parties on the CPUC's service list for this proceeding who provided an email address and by sending a hard copy via U.S. Mail to the parties who did not.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 18, 2011, at San Francisco, California.



Martin Spence

SERVICE LIST

CPUC Service List as of February 7, 2011 Proceeding No. R. 10-12-008

ALAN J. SMITH
GRUNKY LAW FIRM
EMAIL ONLY

PHYLLIS A. WHITTEN
FRONTIER COMMUNICATIONS
EMAIL ONLY

MIKE DOZIER
CALIFORNIA STATE UNIVERSITY, FRESNO
EMAIL ONLY

RANDALL LOWE
DAVIS WRIGHT TREMAINE, LLC
1919 PENNSYLVANIA AVE., NW
WASHINGTON, DC 20006

RICHARD CHABRAN
CALIFORNIA BROADBAND POLICY
NETWORK
1000 N. ALAMEDA ST., STE., 240
LOS ANGELES, CA 90012

ROBERT SWAYZE
L.A. COUNTY ECONOMIC DEVELOPMENT
CORP.
444 S. FLOWER ST., 34TH FLOOR
LOS ANGELES, CA 90071

JESUS G. ROMAN, ESQ
VERIZON CALIFORNIA, INC.
2535 W. HILLCREST DR., MC CAM21LB
NEWBURY PARK, CA 91320

ESTHER NORTHRUP
COX COMMUNICATIONS
350 10TH AVENUE, SUITE 600
SAN DIEGO, CA 92101

JEFF HANCOCK
SAN DIEGO FUTURES FOUNDATION
4275 EL CAJON BLVD., NO.200
SAN DIEGO, CA 92105

ARLENE KREBS, DIRECTOR
CAL STATE UNIVERSITY MONTEREY BAY
100 CAMPUS CENTER, BLDG. 18
SEASIDE, CA 93955

KIMBERLY LIPPI
CALIF PUBLIC UTILITIES COMMISSION
LEGAL DIVISION
ROOM 5001
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

BILL NUSBAUM, MANAGING ATTY
THE UTILITY REFORM NETWORK
115 SANSOME STREET, SUITE 900
SAN FRANCISCO, CA 94104

DAVID P. DISCHER
PACIFIC BELL TELEPHONE COMPANY
505 MARKET ST., STE. 2027
SAN FRANCISCO, CA 94105

MARGARET L. TOBIAS
TOBIAS LAW OFFICE
460 PENNSYLVANIA AVE
SAN FRANCISCO, CA 94107

PETER A. CASCIATO
COMCAST PHONE OF CALIFORNIA, LLC
355 BRYANT STREET, SUITE 410
SAN FRANCISCO, CA 94107

JOSH DAVIDSON
DAVIS WRIGHT TREMAINE LLP
505 MONTGOMERY STREET, SUITE 800
SAN FRANCISCO, CA 94111

LINDA BEST, PRESIDENT & CEO
CONTRA COSTA COUNCIL
1355 WILLOW WAY, NO. 253
CONCORD, CA 94520

DOUGLAS GARRETT
COX COMMUNICATIONS
2200 POWELL STREET, STE. 1035
EMERYVILLE, CA 94608

ENRIQUE GALLARDO
THE GREENLINING INSTITUTE
1918 UNIVERSITY AVE., 2ND FLOOR
BERKELEY, CA 94704-1051

SHARON CROST
SIERRA TEC
11860 YANKEE HILL ROAD
COLUMBIA, CA 95310

BEN HULET, CEO
MOTHER LODGE INTERNET, LLC
301 SOUTH SHEPHERD STREET
SONORA, CA 95370

CRAIG CASE
AMADOR-TUOLUMNE COMMUNITY ACTION
AGY
427 N. HWY. 49, NO.305
SONORA, CA 95370

ERIN MUTCH
SOLSTICE GEOSPATIAL, LLC
267 RIDGE RD.
SONORA, CA 95370

KATHLEEN K. RUSTRUM
COUNTY OF TUOLUMNE
2 SOUTH GREEN STREET
TUOLUMNE, CA 95370

SANDI ROMENA
ROMENA CONSULTING
19334 BARRON RANCH ROAD
SONORA, CA 95370

MIKE IRETON
RURAL BROADBAND NOW
PO BOX 397
WILLITS, CA 95490

STEVEN KARP, PROJECT MGR
REDWOOD COAST CONNECT
HUMBOLDT STATE UNIVERSITY
1 HARPST STREET
ARCATA, CA 95521-8299

FREDERICK L. PILOT, PRESIDENT
CAMINO FIBER NETWORK COOPERATIVE,
INC.
PO BOX 355
CAMINO, CA 95709

BILL MUELLER, CEO / MANAGING PARTNER
VALLEY VISION
2320 BROADWAY
SACRAMENTO, CA 95818

LORI RICE
PLUMAS-SIERRA RURAL ELECTRIC COOP
73233 STATE ROUTE 70
PORTOLA, CA 96122

CATHY EMERSON
CALIFORNIA STATE UNIVERSITY, CHICO
EMAIL ONLY

SUSAN ODOM
BNSF RAILWAY COMPANY
2500 LOU MENK DRIVE - AOB3
FORT WORTH, TX 76131

DOUG THOMPSON, PRESIDENT
DESERT MOUNTAIN RC&D COUNCIL
1525 N. NORMA STREET, STE. C
RIDGECREST, CA 93555

TERI MURRISON, EXECUTIVE DIR
SHEPHERD'S CROOK ENTERPRISES
PO BOX 802
TUOLUMNE, CA 95379

GREGG FOSTER, EXEC DIR
REDWOOD REGION ECONOMIC
DEVELOPMENT
520 E STREET
EUREKA, CA 95501

BRENT SMITH, CEO
SIERRA ECONOMIC DEVELOPMENT
CORPORATION
560 WALL STREET, STE. F
AUBURN, CA 95603

MICHAEL BRINSKELE
BROADBAND ASSOCIATES
4120 DOUGLAS BLVD., NO. 306-200
GRANITE BAY, CA 95746

TARA THRONSON, PROJECT MGR
VALLEY VISION
2320 BROADWAY
SACRAMENTO, CA 95818

DERO FORSLUND
FORSLUND ENTERPRISES
PO BOX 3
WEAVERVILLE, CA 96903

CHRISTINE BURKE
FRONTIER COMMUNICATIONS
180 S CLINTON AVE., 50TH FLOOR
ROCHESTER, NY 14646-0500

JACQUE LOPEZ
VERIZON CALIFORNIA INC.
2535 W. HILLCREST DR., MC CAM21LB
NEWBURY PARK, CA 91320

GEORGE CHIP"" LENNO
CSU, MONTEREY BAY
100 CAMPUS CENTER
SEASIDE, CA 93955

KELLY C. COX
COUNTY OF LAKE
255 N. FORBES ST.
LAKEPORT, CA 95453

CONNIE STEWART
HUMBOLDT STATE UNIVERSITY
CALIFORNIA CENTER FOR RURAL POLICY
1 HARPST ST.
ARCATA, CA 95521-8299

SHELLY HANCE, EXEC DIR.
AMADOR-TUOLUMNE COMMUNITY ACTION
AGCY
935 SO. HWY 49
JACKSON, CA 95642

STACI HEATON
REGIONAL COUNCIL OF RURAL COUNTIES
1215 K ST., STE. 1650
SACRAMENTO, CA 95814

JOHN PAUL, PRESIDENT
SPIRAL INTERNET/NEVADA COUNTY
CONNECTED
416 BROAD STREET
NEVADA CITY, CA 95959

DAVIS WRIGHT TREMAINE LLP
EMAIL ONLY

MARSHA POKORNY
INTELLICALL OPERATOR SERVICES, INC.
1049 NE MACEDONIA CHURCH ROAD
LEE, FL 32059

XAVIER LEONARD
BROADBAND COMMUNITIES COALITION
PO BOX 126107
SAN DIEGO, CA 92112

GLADYS N. PALPALLATOC, ASSOC VP
CALIFORNIA EMERGING TECHNOLOGY
FUND
5 THIRD STREET, SUITE 320, HEARST BLDG
SAN FRANCISCO, CA 94103

REGINA COSTA
THE UTILITY REFORM NETWORK
115 SANSOME STREET, SUITE 900
SAN FRANCISCO, CA 94104

ANGEL AHSAM
CALIF PUBLIC UTILITIES COMMISSION
CARRIER OVERSIGHT AND PROGRAMS
BRANCH
AREA 3-E
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

CHRISTOPHER MYERS
CALIF PUBLIC UTILITIES COMMISSION
COMMUNICATIONS POLICY BRANCH
ROOM 4209
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

MICHAEL EVANS
CALIF PUBLIC UTILITIES COMMISSION
CARRIER OVERSIGHT AND PROGRAMS
BRANCH
AREA 3-D
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

SHERI INOUE BOLES
CALIF PUBLIC UTILITIES COMMISSION
CARRIER OVERSIGHT AND PROGRAMS
BRANCH
AREA 3-D
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

JOHN SHEEHAN
PLUMAS CORPORATION
PO BOX 3880
QUINCY, CA 95971

JANE WHANG
DAVIS WRIGHT TREMAINE LLP
505 MONTGOMERY STREET, SUITE 800
SAN FRANCISCO, CA 94111-6533

ANGELA YOUNG
CALIF PUBLIC UTILITIES COMMISSION
CONSUMER PROGRAMS BRANCH
AREA 3-E
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

GERALDINE V. CARLIN
CALIF PUBLIC UTILITIES COMMISSION
CARRIER OVERSIGHT AND PROGRAMS
BRANCH
AREA 3-E
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

NATALIE BILLINGSLEY
CALIF PUBLIC UTILITIES COMMISSION
COMMUNICATIONS POLICY BRANCH
ROOM 4209
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

THOMAS R. PULSIFER
CALIF PUBLIC UTILITIES COMMISSION
DIVISION OF ADMINISTRATIVE LAW
JUDGES
ROOM 5016
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

CHARLIE BORN
FRONTIER COMMUNICATIONS
PO BOX 340
ELK GROVE, CA 95759

CHARLES H. CHRISTIANSEN
CALIF PUBLIC UTILITIES COMMISSION
CARRIER OVERSIGHT AND PROGRAMS
BRANCH
AREA 3-D
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

MICHAEL C. AMATO
CALIF PUBLIC UTILITIES COMMISSION
CARRIER OVERSIGHT AND PROGRAMS
BRANCH
ROOM 3211
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

ROBERT HAGA
CALIF PUBLIC UTILITIES COMMISSION
EXECUTIVE DIVISION
ROOM 5221
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

XIAO SELENA HUANG
CALIF PUBLIC UTILITIES COMMISSION
COMMUNICATIONS POLICY BRANCH
ROOM 4211
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214