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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 ASSIGNED COMMISSIONER'S RULING SOLICITING COMMENTS ON DRAFT PROPOSALS

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I. INTRODUCTION.

Pursuant to the schedule outlined in the August 15, 2011 Assigned Commissioner's Ruling Soliciting Comments on Draft Proposals ("ACR"), 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 Co. (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) and Winterhaven Telephone Company (U 1021 C) (the "Small LECs") hereby submit this reply to the opening comments on the California Public Utilities Commission's ("Commission") proposed revisions to the California Advanced Services Fund ("CASF") program.[1] The Small LECs continue to support the overall framework set forth in the Attachments to the ACR, but the opening comments point to a number of areas in the Communications Division's ("CD") recommendations that still require clarification or adjustment. These reply comments address the Small LECs' major concerns regarding the issues raised in the opening comments.

Several other parties share the Small LECs' major concern regarding the use of "advertised speeds" to define "underserved" areas. Reliance on actual speeds, and the adoption of the 5 MB/s threshold will be key to ensuring that CASF funding is directed to areas where it is truly needed. The Small LECs urge the Commission to modify that aspect of its proposal.

The opening comments also identify several areas for refinement in the scoring criteria and the loan requirements and restrictions. The Commission should resist proposed modifications to the eligibility criteria, and should reject proposals to remove "financial viability" from the loan evaluation process and the scoring criteria. The Commission should also reject calls for the imposition of open access and net neutrality requirements on CASF-funded projects. Based on

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[1] The Small LECs received opening comments from the following parties: (1) AT&T and its affiliates ("AT&T"); (2) Verizon California Inc. ("Verizon"); (3) Citizens Telecommunications Company of California, Inc. d/b/a Frontier Communications of California and its affiliates ("Frontier"); (4) the Commission's Division of Ratepayer Advocates ("DRA"); (5) The Utility Reform Network ("TURN"); (6) the Corporation for Education Network Initiatives in California ("CENIC"); (7) The Camino Fiber Network Cooperative, Inc. ("Camino Fiber"); (8) the Sierra Economic Development Corporation ("SEDCorp"); (9) Amador-Tuolumne Community Action Agency ("ATCAA"); and (10) Valley Vision.

comments from AT&T and DRA, the Commission should further clarify the confidentiality standards to which information in the application will be subject. These and other items of significance to the Small LECs are addressed in further detail below.

II. THE OPENING COMMENTS PROVIDE FURTHER SUPPORT FOR THE USE OF ACTUAL SPEEDS IN DEFINING "UNDERSERVED" AREAS.

The CASF should rely on a combined *actual* upload and download speed of 5 MB/s for defining "underserved" areas, not an *advertised* threshold of 10 MB/s. The opening comments underscore the problems with CD's proposed benchmark of 10 MB/s. AT&T notes that the "10 mbps proposed here . . . appears arbitrary." *AT&T Opening Comments*, at p. 5. Frontier points out the disconnect between the CD proposal and the speed benchmarks in the National Broadband Plan, observing that "[i]t is not clear what the benefit is to suggest a combined speed of 10 mbps advertised speed when the benchmark of actual 4 mbps download and 1 mbps upload is the standard." *Frontier Opening Comments*, at p. 4. As Verizon demonstrates, "[t]he FCC recently acknowledged that the 'actual vs. advertised' data in the NBP upon which Staff relies dates back to early 2009 and is obsolete." *Verizon Opening Comments*, at p. 5. The Commission should not adopt a speed benchmark that is premised on the notion that actual broadband speeds are overstated by more than 100%.

If, notwithstanding these objections, the Commission plans to rely on advertised speeds to guide initial applications, the Commission should permit existing providers to challenge findings that areas are "underserved" by demonstrating that actual speeds exceed 5 MB/s combined. For example, if a Small LEC advertises 5 MB/s combined speed in a given territory, and an "underserved" application is filed for that Small LEC's territory, then the Small LEC should have the opportunity to show that the actual speeds are at least 5 MB/s. Absent a means to rebut a conclusion that an area is "underserved," valuable CASF resources will be misallocated to areas where there is already sufficient broadband coverage.

Verizon proposes to include 3G and 4G wireless broadband coverage in test for whether an area is "underserved." *Verizon*, at pp. 3-4. If these advanced wireless services meet the speed threshold and provide ubiquitous coverage, they should be a basis for concluding that an area is

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"served." However, in many rural areas, coverage is spotty or nonexistent except near roads and towns. The existence of limited wireless broadband coverage in more populous portions of an area should not be sufficient to make the whole area "served." A 3G or 4G wireless provider should have to show that actual speeds consistently exceed the benchmark level and that coverage is reliable throughout the target area to defeat a finding that an area is "underserved."

The Small LECs agree with Verizon that the Commission's priority should be "unserved" areas, but the CD proposal also properly targets "underserved" populations. *Verizon Opening Comments*, at p. 1. However, the Commission should not adopt an overly expansive definition of "underserved," such as the one proposed by Camino Fiber. *Camino Fiber Opening Comments*, at pp. 3-4. If the definition of "underserved" were "an area . . . where at least one occupied premise" does not have facilities-based broadband, vast areas of the state would become "underserved," and it would be overly burdensome to discern which areas are truly in need of additional broadband infrastructure. *Id.* at p. 3.

It is important that there be a benchmark speed threshold to assist potential applicants and the Commission in identifying the "underserved" areas. As discussed in the Small LECs' opening comments, the Commission should adopt an actual speed threshold of 5 MB/s combined upload and download.

III. ADDITIONAL CLARIFICATIONS TO THE SCORING PROCESS AND THE SCORING CRITERIA ARE NECESSARY.

The opening comments reflect the need for further clarifications to the procedures and criteria by which applications will be scored. The Small LECs share SEDCorp's concern that the scoring system may lead to absurd results if it is based entirely upon a comparison of applications submitted. SEDCorp *Opening Comments*, at p. 10. As SEDCorp observes, "comparing project characteristics for only a few applications that could likely represent very different environments would likely lead to placing the rural, low-population density projects at a disadvantage." *Id.* To the extent possible, the Commission should create metrics that do not depend upon comparisons, and any comparison-based criteria should be limited to similarly-situated projects.

The Commission should not adopt DRA's proposal to impose "cost limits" on a per-

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household basis. *DRA Opening Comments*, at p. 10. Many of the areas that remain unserved are not served precisely because the cost to bring broadband to those areas is extraordinarily high, and the population in the area is small. To achieve the goals of the CASF program, the Commission should not impose caps on the costs to reach customers in these most remote areas.

Further clarifications are necessary to the "service area" metric in the proposed scoring system. SEDCorp echoes the Small LECs' concern that the "service area" criterion focus on "increasing the number of *connections*," not just the geographic scope of a project. As SEDCorp points out, geographic area is "deceptively useful" in mapping, but ultimately not a strong indicator of where broadband facilities are needed most. *SEDCorp Opening Comments*, at p. 10. Projects that serve more people should be favored over projects that serve more space.

Contrary to the proposals from some of the Regional Consortia parties, Consortia should not be given a formal role in the process of reviewing CASF applications. *See ATCAA Opening Comments*, at p. 2; *Valley Vision Opening Comments*, at p. 3. While the Small LECs agree that Regional Consortia can provide important input on how to prioritize broadband funding, the Regional Consortia should not be institutionalized in the process of reviewing project proposals. If the Commission provides opportunities to comment on applications at various stages, all parties should be permitted to comment. Regional Consortia should not be given a special or formalized role in the process of reviewing applications.

IV. THE COMMISSION SHOULD LIMIT GRANT AND LOAN FUNDING TO CPCN-HOLDERS AND WIRELESS REGISTRANTS WHO MAKE AT LEAST A 10% FINANCIAL COMMITMENT TO A TARGET PROJECT.

As the steward of the CASF funds and administrator of the CASF program, the Commission should require that grant recipients are subject to its jurisdiction. The Rural Consortia parties recommend that the eligibility requirements be expanded to include other entities, arguing that an "affidavit" could be used to submit to the CASF program requirements. *ATCAA Opening Comments*, at p. 1; *Valley Vision Opening Comments*, at p. 5. TURN also proposes that "community service districts" and similar entities should be potential recipients of CASF grants. *TURN Opening Comments*, at p. 3. Even if these entities submit affidavits indicating that they will comply with CASF rules, the Commission will have little legal recourse if

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these entities do not fulfill grant obligations. The CD recommendation in Attachment 2 to the ACR permits parties other than certificated and registered carriers to partner with a regulated entity. *Attachment 2*, at p. 7. This option is sufficient to provide for appropriate participation by local governments and other entities who may able to contribute to broadband deployment in "unserved" and "underserved" areas.

The Commission should also reject the suggestion that "in kind" contributions could be a substitute for a financial commitment toward a CASF project. *See TURN Opening Comments*, at p. 4. Permitting items like "right of way access" to substitute for a financial commitment would expand the applicant pool to a number of providers who may not ultimately be serious about building the target project. Telecommunications providers may also have easement rights that they need to utilize in order to build a project, but that is not counted toward a company's financial commitment, and it should not be. The proposed increase in the grant components of the funding thresholds should be sufficient to attract a wider range of applicants to build in the most remote "unserved" and "underserved" areas.

V. THE BASIC FRAMEWORK FOR THE CASF LOAN PROGRAM IS SOUND, BUT SMALL ADDITIONAL REFINEMENTS SHOULD BE MADE.

The Small LECs continue to support the Commission's configuration of the CASF loan program as an adjunct to the grant program. Using a common scoring system and eligibility standard will provide much-needed certainty to potential applicants. The Small LECs also strongly endorse the use of a "financial viability" criterion in evaluating both loan and grant applications.

Based on the opening comments, some adjustments to the loan aspects of the CASF program should be made. Most significantly, as the Small LECs noted in opening comments, the rules should not foreclose assets that are already used to secure other loans from being used to secure CASF loans, provided that the total amount of the outstanding debt does not exceed the total value of the assets. *Small LECs Opening Comments*, at pp. 5-6. DRA is also correct that the Commission should supply additional details regarding the loan duration and funding availability limitations. *DRA Opening Comments*, at p. 7. The Small LECs further agree with the comments

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from several parties that there should not be a prohibition on multiple loans from the same provider. *See AT&T Opening Comments,* at p. 1; *Valley Vision Opening Comments*, at p. 6.

VI. THE COMMISSION SHOULD CLARIFY THE CONFIDENTIALITY STANDARDS THAT WILL APPLY TO CASF APPLICATION MATERIALS.

Both DRA and AT&T raise important points about the extent to which confidentiality standards will apply to CASF applications. The Small LECs share DRA's perspective that the materials in CASF applications ought to be public to the greatest extent possible without compromising sensitive competitive data. *DRA Opening Comments*, at pp. 4-6. However, given the numerous additional items that have been included in the proposed application, AT&T also raises valid concerns that some of the information requested is competitively sensitive. *AT&T Opening Comments,* at p. 2. To provide clarity to applicants, the Commission should clarify which specific types of items will be subject to public disclosure. The Commission should not rely on a case-by-case analysis of application materials claimed to be confidential under General Order 66-C and Public Utilities Code Section 583.

The public and potential providers affected by proposed projects should have "information sufficiently detailed to allow an evaluation of whether a project should or should not be challenged," as DRA suggests. *DRA Opening Comments*, at p. 6. This information should include the name of the provider, the technology employed, the specific areas claimed to be "unserved" or "underserved," and the speed target that the applicant proposes to meet. The specific locations of the provider's existing infrastructure and information about the pricing of services to be provided using the new facilities should be confidential.

VII. PARTIES' PROPOSALS FOR NET NEUTRALITY AND OPEN ACCESS PROVISIONS ARE VAGUE, AND THEY SHOULD NOT BE ADOPTED.

TURN and DRA argue that facilities built with CASF grant monies should be subject to "open access" and "net neutrality" requirements. *TURN Opening Comments*, at p. 4; *DRA Opening Comments*, at p. 11. These proposals are not sufficiently concrete for prospective grant applicants to understand the consequences of imposing these conditions on their facilities. DRA's statement that CASF recipients should be required to "share their networks" is particularly

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troubling. Even where CASF grant monies have contributed significantly to an applicant's facilities investment, the applicant still owns the facilities once they are built. The facilities are not "public" in the sense that they will be owned by or managed by the government, even though a government program may have contributed to their construction. Issues of "open access" in the regulated telecommunications arena have been the subject of extensive regulation and litigation, and generic standards exist to govern a provider's responsibilities in that regard. "Net neutrality" is an issue being addressed at the federal level, and refers more to a generic set of non-discrimination commitments regarding the content traveling over broadband-capable facilities.

These issues can be and are being addressed comprehensively in other forums, and need not be addressed here. However, to the extent that the Commission nevertheless wishes to impose a requirement of this sort, it should be limited to the "net neutrality" and "nondiscrimination" principles that were included in the requirements for the recent ARRA grants, as described in TURN's comments.

VIII. CONCLUSION.

The Small LECs appreciate this opportunity to address the suggestions of other interested parties on the proposed revisions to the CASF program. The Commission should implement the additional adjustments described herein, and move forward with a revised framework for distribution of CASF grants and loans substantially as described in the Attachments to the ACR.

Dated this 26th day of September, 2011, at San Francisco, California.

Respectfully submitted,

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