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BEFORE THE CALIFORNIA PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking into the  
Review of the California High Cost Fund  
B Program.

R.06-06-028  
(Filed June 29, 2006)

**REPLY COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES  
IN SUPPORT OF ITS PETITION FOR MODIFICATION  
OF DECISION 07-12-054 RELATED TO THE  
CALIFORNIA ADVANCED SERVICES FUND (CASF)**

**I. INTRODUCTION**

With leave from Assistant Chief Administrative Law Judge Jacqueline Reed, the Division of Ratepayer Advocates (DRA) submits these Reply Comments in support of its Petition for Modification of Decision (D.) 07-12-054.

Several times after the Commission issued D.07-12-054, DRA commented on Resolutions granting broadband funding, raising the same concerns DRA raises in its Petition for Modification. The Commission's final Resolutions granting funding time and time again rejected DRA's pleas, *stating instead that DRA should file a Petition for Modification.*<sup>1</sup> Having done so, two large Incumbent Local Exchange Carriers (ILECs) who have applied for and received virtually no funding from the CASF program now seek to cut off this avenue of relief based solely on vague assertions that DRA "cites no facts" – an assertion DRA refutes below. The Commission should deny the meritless attempts by Verizon and AT&T to forestall needed improvements to the program. The ILECs also fail to refute DRA's arguments on transparency and cost control. Finally, DRA agrees with The Utility Reform Network's (TURN) suggested changes to DRA's Petition regarding broadband installation fees, as discussed below.

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<sup>1</sup> T-17229 at 6; T-17234 at 5; T-17236 at 8; T-17232 Alternate at 14.

## II. DISCUSSION

### A. DRA Has Presented Ample Facts to Support its Petition

Verizon and AT&T erroneously assert that DRA's Petition is really a disguised Application for Rehearing, allegedly because DRA does not provide new facts. However, DRA presented ample facts in support of its Petition that did not exist when the Commission issued D.07-12-054. As the Commission held in D.09-03-037, in which it granted Southern California Edison's (SCE) Petition for Modification, "[b]ecause this petition presents new facts that were not in existence in the year following the effective date of D.06-10-011, SCE has met the requirements of Rule 16.4(d) by explaining why this petition could not have been filed within one year of the effective date of D.06-10-011."<sup>2</sup> The same result is warranted here.

DRA cited to the following new facts relevant to the assertions in its Petition, with appropriate citations to the record of this proceeding<sup>3</sup>:

- The Commission granted funding to only one project in the CASF's first year of operation. (Timing of Petition, p. 4.)
- The Commission approved most CASF grants after the American Recovery and Reinvestment Act (ARRA) funding became available, in late 2009 and early 2010. (Timing of Petition, p. 3.)
- The disclosure by Communications Division (CD) of Census Block Groups (CBG) and zip codes does not give parties the name of the applicant or other details. (Transparency, p. 6; *see* Appendix A for what CD discloses.)
- The Commission only receives public input after it has tentatively decided to fund a project. (Transparency, p. 6.)

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<sup>2</sup> 2009 Cal. PUC LEXIS 176, at \*4-5.

<sup>3</sup> Official notice is another way in which a party may allege facts in a Petition for Modification. *Id.* at \*5 ("Any factual allegations must be supported with specific citations to the record in the proceeding or to matters that may be officially noticed.") Appendix A to this filing shows sample data that CD's website discloses about applicants. It simply shows row upon row of CBGs or zip codes, with no other data, and a rudimentary map of California. Official notice of the contents of the website is appropriate pursuant to Rule 13.9.

- There has been virtually no competition in applications, and thus the original reason for confidentiality – a need to protect competitive data – has not emerged. (Transparency, *see* pp. 11-12.)
- After issuing D.07-12-054, the Commission issued its CASF application materials, which only require applicants to state the targeted number of subscribers/households, with no support or marketing to reach these numbers. (Affordability/Adoption, p. 6.)
- Some CASF applicants propose to charge installation/service activation fees on top of receiving CASF and ARRA funding.<sup>4</sup> (Affordability/Adoption, p. 6.)
- Since the Commission issued D.07-12-054, the FCC has stated that "4 megabits per second (Mbps) downstream and 1 Mbps upstream . . . is a minimum speed generally required for using today's video-rich broadband applications and services, while retaining sufficient capacity for basic web browsing." (Speed, p. 9, n.16.)
- The Commission has approved per-household costs as high as \$37,000/household, and a range of \$289-\$37,000 per household. (Cost Control, pp. 10, 12.)
- There has been only one instance where more than one bidder competed for CASF funding in a geographic area. (Cost Control, p. 10.)
- In no approved CASF Resolution has the Commission analyzed the per-household costs, compared one application to another, or questioned why one project costs \$300 per household while another costs 100 times as much. (Cost Control, p. 12.)
- Some CASF applicants have promised to share their networks. (Open Access, p. 13.)
- The Commission's Resolutions assert that audits are in the Commission's discretion, when in fact audits are mandated by statute. (Audits, p. 14.)

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<sup>4</sup> *See* T-17265 (Audeamus LLC dba Sebastian).

As the foregoing non-exhaustive list makes clear, DRA has amply supported its Petition for Modification with facts unknown at the time the Commission adopted D.07-12-054, contrary to the assertions of Verizon and AT&T.

### **B. Transparency**

Verizon cites General Order 66-C as its sole basis for the extreme level of confidentiality protection given CASF applications. Verizon at 2. Verizon fails even to acknowledge Rulemaking 05-06-040, in which the Commission held that utterly unsupported claims of confidentiality have no place on Commission proceedings. "We start with a presumption that information should be publicly disclosed and that any party seeking confidentiality bears a strong burden of proof."<sup>5</sup>

As DRA notes above, the facts demonstrating how little data about individual applications CD would make publicly available were not known until well after the Commission approved D.07-12-054.<sup>6</sup> Nor has any party publicly tried, let alone succeeded, in meeting the "strong burden of proof" the Commission requires. Given that virtually no competition exists for CASF funding, such a showing is not possible, and the Commission should open the program to the normal public comment processes it requires for other grants of ratepayer funding.

### **C. Evidence of What it Costs to Install Broadband Is Available**

Contrary to Verizon's assertion, there is data available on what it costs to install broadband.<sup>7</sup> Indeed, the Commission has an entire program dedicated entirely to serving high cost rural areas. It defies credulity to assert that *no* evidence exists of what it costs, at least enough to tell whether installing a connection costs \$289 or \$37,000 per household! The mere idea that Verizon – which serves rural areas all over the country – has no idea what such service costs is preposterous. The ratepayers deserve better attention to their pocketbooks than this.

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<sup>5</sup> D.06-06-066, 2006 Cal. PUC LEXIS 222, at \*8.

<sup>6</sup> AT&T's assertion that DRA presents "no new facts," is thus simply erroneous. AT&T at 2.

<sup>7</sup> See, e.g., <http://www.dslprime.com/dslprime/42-d/1447-carriers-cost-of-dsl>.

**D. Connection Fees**

TURN makes a fair point in noting that some providers may need the extra funding that connection fees provide. While the example TURN cites – T-17246, Plumas-Sierra – was rescinded by the Commission in T-17272, DRA agrees that where 1) the provider does not receive ARRA matching funding,<sup>8</sup> or 2) the provider is a non-profit organization, modest connection fees may be appropriate,<sup>2</sup> as long as they are not excessive.<sup>10</sup>

Respectfully submitted,

/s/ SARAH THOMAS

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SARAH THOMAS

Attorney for the Division of Ratepayer  
Advocates  
California Public Utilities Commission  
505 Van Ness Ave.  
San Francisco, CA 94102  
Phone: (415) 703-2310  
Facsimile: (415) 703-2262

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<sup>8</sup> Verizon and AT&T assert that all CASF providers must contribute 60% of funding, a fact they know is not true since some providers are also receiving ARRA funding. Verizon at 4; AT&T at 3.

<sup>2</sup> A January 2010 survey of 1500 broadband providers (DSL and cable) produced by the Kellogg School of Management at the University of Rochester showed that median broadband prices at \$49.99 (DSL) and \$53.00 (cable). <http://www.kellogg.northwestern.edu/faculty/greenstein/images/htm/Research/WP/CSIO-WP-0102.pdf>, tables 3a and 3b ("Summary by Year, DSL and Cable," 2009 Existing Prices). Connection fees should not exceed a level reflective of these amounts.

<sup>10</sup> T-17265 (Audeamus LLC dba Sebastian) appears to qualify under these criteria.

APPENDIX A

*Example of Data about CASF Applications on  
CPUC Communications Division Website*

**CALIFORNIA ADVANCED SERVICES FUND**

**Unserviced Areas Proposed to be Served by County (June 23, 2010)**

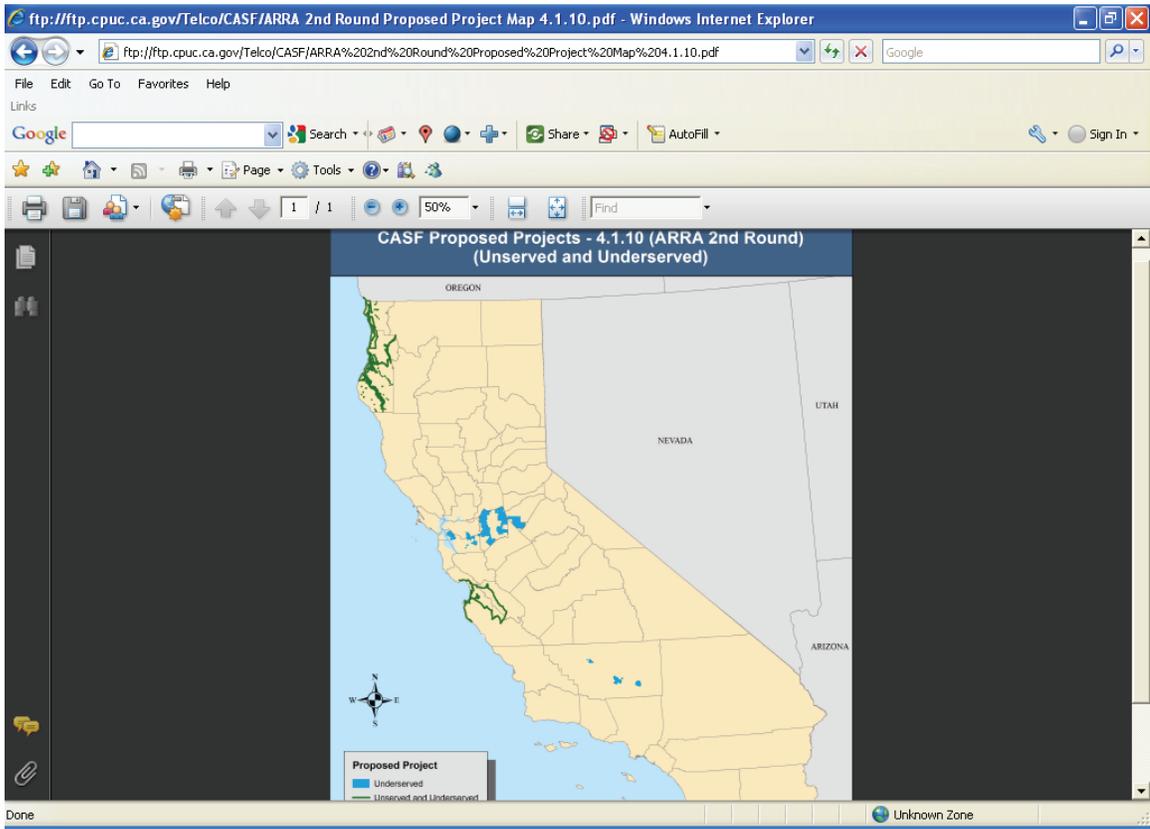
**Census Block Groups (CBGs)**

<u>Fresno</u>	<u>Kings</u>	<u>Tulare</u>	<u>San Diego</u>
060190059025	060310001002	061070009003	060730211004
060190063001	060310001003	061070014001	060730216042
060190063002	060310001004	061070014002	
060190064033	060310002001	061070014005	
060190064034	060310002003	061070016022	<u>Riverside</u>
060190064035	060310003001	061070020071	060650444031
060190065001	060310004021	061070021001	
060190069003	060310004023	061070021002	
060190074001	060310004025	061070024001	
060190074002	060310012001	061070024002	
060190077001	060310012002	061070024003	
060190077004	060310012003	061070024004	
060190078001	060310013001	061070025001	
060190078002	060310013002	061070025002	
	060310016011	061070025003	
	060310016012	061070027002	
<u>Kern</u>	060310016013	061070027007	
060290001015	060310016016	061070027008	
060290037003	060310016017	061070030021	
060290038031	060310016021	061070031001	
060290038041		061070031002	
060290039001	<u>Tulare</u>	061070031003	
060290039002	061070001002	061070032002	
060290042001	061070001003	061070032003	
060290043011	061070001006	061070032004	
060290043012	061070002021	061070032005	
060290045002	061070003012	061070033001	
060290046021	061070003016	061070033002	
060290046022	061070003021	061070033003	
060290046023	061070003022	061070034001	
060290047001	061070003023	061070034002	
060290048004	061070003024	061070034003	
060290050003	061070006004	061070034004	
060290051031	061070007012	061070034005	
060290052016	061070008001	061070035001	
	061070008002	061070039021	
	061070008003	061070042001	
	061070009001	061070042004	
	061070009002	061070043001	
		061070043002	
		061070043003	
		061070045001	

**CALIFORNIA ADVANCED SERVICES FUND**  
**Unserved Areas Proposed to be Served by County (June 23, 2010)**

**ZIP CODES**

93401	93201	93656
93420	93206	93657
93424	93212	93662
93433	93215	93673
93444	93218	93675
93448	93219	95724
	93221	95728
	93230	95922
	93234	95959
	93242	95960
	93244	96161
	93245	96162
	93247	
	93250	
	93256	
	93257	
	93261	
	93263	
	93265	
	93266	
	93267	
	93270	
	93272	
	93274	
	93277	
	93280	
	93282	
	93286	
	93291	
	93292	
	93308	
	93312	
	93615	
	93618	
	93624	
	93631	
	93646	
	93647	
	93648	
	93654	



**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of **REPLY COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES IN SUPPORT OF ITS PETITION FOR MODIFICATION OF DECISION 07-12-054 RELATED TO THE CALIFORNIA ADVANCED SERVICES FUND (CASF)** to the official service list in **R.06-06-028** 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 **October 25, 2010** at San Francisco, California.

/s/ CHARLENE D. LUNDY

Charlene D. Lundy

**SERVICE LIST  
R.06-06-028**

kevin.saville@frontiercorp.com  
jesus.g.roman@verizon.com  
esther.northrup@cox.com  
elaine.duncan@verizon.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@gmssr.com  
mschreiber@cwclaw.com  
smalllecs@cwclaw.com  
deyoung@caltel.org  
suzannetoller@dwt.com  
selbytelecom@gmail.com  
tlmurray@earthlink.net  
jon@morenotrenching.com  
mort@praxisfiber.com  
douglas.garrett@cox.com  
lmb@wblaw.net  
pucservice@dralegal.org  
cratty@comcast.net  
charlie.born@frontiercorp.com  
lesla@calcable.org  
beth.fujimoto@cingular.com  
cindy.manheim@cingular.com  
judypau@dwt.com  
trevor@roycroftconsulting.org  
Johnj@Rapidlink.com  
kmudge@Covad.com  
PHILILLINI@aol.com  
don.eachus@verizon.com  
jacque.lopez@verizon.com  
jborchelt@gmail.com  
mshames@ucan.org  
lindab@stcg.net

maryliz.dejong@att.com  
ashm@telepacific.com  
nlubamersky@telepacific.com  
gblack@cwclaw.com  
mmattes@nossaman.com  
mariacarbhone@dwt.com  
John\_Gutierrez@cable.comcast.com  
anitataffrice@earthlink.net  
asj@calcable.org  
jwakefield@covad.com  
joe.chicoine@frontiercorp.com  
mcf@calcom.ws  
alk@cpuc.ca.gov  
ayo@cpuc.ca.gov  
aba@cpuc.ca.gov  
chc@cpuc.ca.gov  
crs@cpuc.ca.gov  
dgw@cpuc.ca.gov  
pod@cpuc.ca.gov  
evw@cpuc.ca.gov  
fvr@cpuc.ca.gov  
gvc@cpuc.ca.gov  
gtd@cpuc.ca.gov  
kar@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  
rudym.reyes@verizon.com  
thomas.long@sfgov.org  
GKarish@millervaneaton.com  
marcel@turn.org  
Kristin.L.Jacobson@sprint.com