BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking into the Review of the California High Cost Fund B Program.	)))))	R. 06-06-028 (Filed June 29, 2006)

RESPONSE OF THE UTILITY REFORM NETWORK TO THE DIVISION OF RATEPAYER ADVOCATES PETITION FOR MODIFICATION OF DECISION 07-12-054, IMPLEMENTING CALIFORNIA ADVANCED SERVICES FUND (CASF)

The Utility Reform Network ("TURN") hereby files its Response to the Division of Ratepayer Advocates ("DRA") Petition for Modification of Decision 07-12-054 ("Petition"), pursuant to Rule 6.3(d) of the Commission's Rules of Practice and Procedure. TURN supports the intent of DRA's petition, and several of the specific proposals set forth in the petition. We offer additional proposed revisions for the Commission's consideration. The intent of DRA's Petition and TURN's proposals is to ensure that the CASF funds proposals that are cost-effective and provide advanced, affordable broadband service for the people of California.

I. TRANSPARENCY: THE COMMISSION SHOULD ADOPT DRA'S PROPOSED MODIFICATIONS AND TURN'S ADDITIONAL PROPOSAL TO PROVIDE OPPORTUNITY FOR PUBLIC REVIEW.

DRA correctly observes that D.07-12-054 confers broad confidentiality protection for CASF applications, even when there is no clear justification for such treatment. The result is that money is being awarded based on a review conducted through a virtually secret process. The public is aware of the decisions that emerge from the black box, but has no knowledge about the criteria that were followed (or not followed) that led to the

decision.[1] Residents and businesses located in the geographic areas that are covered by an application have little or no opportunity to review the proposals or to provide input to the Commission. Many potential customers are not even aware that proposals have been submitted to receive subsidy funds to serve their region.

DRA's proposes modifying D.07-12-054 to require applications for CASF funding to be served on the service list for R.06-06-028, or successor proceeding, and the Communications Division to forward all such applications to its "TD_AR" Resolution email list, as well as granting any party the right to file comments on such applications.[2] The modifications to the text and Ordering Paragraphs of D.07-12-054 are eminently reasonable and should be adopted.

While DRA's proposal would ensure that representatives of the public who are routinely involved in CPUC proceedings would have the opportunity to review and comment on applications, it would not confer the same opportunity for members of the public who are residents or businesses that would be directly affected by the application. Input from members of the public who are familiar with the area to be served and, in some instances, the applicants, would be very helpful to the Commission's deliberative process. This would be particularly true in situations where there are competing applications, or applications that are disputed by other service providers. Members of the public could provide first hand information about factors such as the quality of service currently available, locations that do or do not have broadband alternatives and the performance of applicants currently providing similar services in the same region. TURN believes that

[1] While TURN participated in the development of the criteria that Commission Staff is supposed to use to judge CASF applicants' proposals, the proposed decision wherein the Commission announces a potential CASF grant is devoid of how the Staff applied the critera, how competing applications scored and what the final score was for the chosen grantee.
[2] Petition, p. 6-7.

DRA's proposed language should be enhanced to include a requirement that public notice of CASF applications will be issued, including a statement that there will be an opportunity for public comment. Notice should be provided using the methods generally required by the Commission, e.g., advertisements in local media outlets and - in the case of applicants that already provide other types of services in the region covered by the application - bill inserts.

II. AFFORDABILITY AND ADOPTION: THE COMMISSION SHOULD ENSURE THAT SERVICES SUPPORTED WITH CASF FUNDS ARE AFFORDABLE.

TURN wholeheartedly agrees with DRA that projects funded by the CASF should include plans for encouraging adoption and affordability of high speed broadband in unserved and underserved communities. We support DRA's proposed ordering paragraph requiring all CASF applicants to include in their application an explanation of how they plan to ensure that they will meet targeted adoption levels and ensure that customers in the regions they serve can afford their broadband offerings.

TURN also supports the proposed requirement that CASF recipients agree to cap monthly recurring charges for a minimum of two years following the date that a recipient first offers service.

TURN does not support the proposed ordering paragraph stipulating that "No recipient of CASF funding may charge its end user customer any amount to install service." We fully support the intent of the proposal. However, TURN believes it would be unwise to make this a blanket requirement, given the different circumstances associated with grants for projects that do not also receive federal ARRA funding, versus projects that do receive federal funding. Projects that do not receive ARRA funding will generally

require a significant capital outlay from the applicant. It may not be financially feasible to offer service with no connection fee. It is telling that one of the examples cited in DRA's Petition is a grant awarded to the subsidiary of a rural electrical co-op.[3] Unlike a for profit company, the co-op has no incentive to charge inordinately high prices to customers. And unlike investor-owned utilities, the co-op has no incentive to pad a rate-base or enhance its bottom line through unreasonable price increases. Yet, the grantee is still required to provide sufficient capital to complete the project and in this instance felt the need to require a non-recurring connection fee. It is not beyond the realm of possibility that in some other instances connection charges for service provided by profit making entities might be necessary and reasonable. It is important that the charges themselves are reasonable, and affordable. On the other side of the coin, it is equally important to ensure that in situations where a carrier (for example, a telephone company or cable company) provides broadband to customers in a wider region beyond the area covered by facilities built with CASF funds, that customers outside the supported area do not pay higher fees, rates or charges to offset costs incurred to provide service within the CASF and/or ARRA supported area.

Rather than enact a blanket prohibition on connection fees, the Commission should first draw a distinction between those applicants who receive ARRA grant funds for last mile projects, and those who do not. Grantees receiving ARRA funds have a much higher portion of their construction costs covered by public funds and a better case can be made for limiting or prohibiting connection charges. In other instances, federal funds might be provided in the form of loans from the broadband funds issued by the Rural Utilities Service. In such cases, in reviewing the reasonableness of connection fees and recurring

[3] Resolution T-17246, Plumas-Sierra Telecommunications last-mile project; Petition, p. 8.

charges, the Commission will need to be familiar with the terms of such loans, in addition to the other financial aspects of these projects.

Every applicant for CASF funds should be required to provide cost justification for both connection charges and monthly service rates and this information should be analyzed by staff. The Commission should require that applicants offer installment plans for payment of connection charges exceeding $25. This requirement would help ensure that the broadband service funded by CASF is accessible and affordable to low-income customers.

III. SPEED: THE COMMISSION SHOULD ADOPT DRA'S PROPOSED MODIFICATIONS.

DRA proposes to modify the CASF requirements to be consistent with those adopted by the FCC. DRA suggests a possible exception to the FCC's standard in situations where no provider other than the applicant were offering service to an area. In these instances, the public would be allowed to comment on whether it would be preferable to decline funding for the proposal or to approve the proposal with sub-par speeds. This is an important exception given that there are locations in California where fiber is not widely available and wireless service that is not capable of providing broadband at the FCC's adopted standard speed may be the only viable alternative. DRA's proposal is reasonable and should be adopted.

IV. COST CONTROL: THE COMMISSION SHOULD HOLD A WORKSHOP AND SOLICIT COMMENT ON THE COSTS OF RURAL BROADBAND DEPLOYMENT.

DRA argues that the CASF should not fund projects that exceed the costs of deploying broadband in a competitive marketplace. DRA correctly notes that the

Commission designed the CASF anticipating that competitive bidding would provide a check on unreasonable costs and prices and viewed competitive bidding as a substitute for cost review.[4] Since there has been no competitive bidding, TURN agrees with DRA that it is important to ensure that public money is wisely spent and in order to do so, the Commission must incorporate cost review into its CASF process. DRA proposes two modifications to D. 07-12-054 to address cost control:

> Ordering Paragraph: "No project will receive funding that proposes to spend more than the benchmark per-household cost for installing the relevant broadband technology, with such benchmark to be set in further proceedings in this docket.
>
> Ordering Paragraph: "All applications for CASF funding shall make publicly available detailed project costs, including an estimate of the cost of installing broadband facilities on a per-household basis."

DRA proposes that the Commission gather data on "what it actually costs to install broadband in rural areas, and set a benchmark against which to compare CASF proposals." DRA commits to gathering its own data and suggests the possibility of a workshop where such data could be furnished to the Commission.

TURN supports adopting the requirement that all applications for CASF funding shall make detailed project costs publicly available. However we believe that prior to requiring projects to meet a benchmark, the Commission should first determine whether addressing the cost control issue through a benchmark is the most effective way to ensure cost responsibility. Then, the benchmarks against which applications should be judged should be established. It would be unreasonable to expect potential applicants to submit proposals to be judged against benchmarks that have yet to be adopted.[5] TURN

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[4] Petition, p. 11.

[5] It is possible that establishing formal cost benchmarks might create adverse incentives. Applicants would know what cost to match. That process would not necessarily produce the most efficient outcome. The benchmark idea is intriguing but requires more analysis.

wholeheartedly agrees with DRA that the Commission must have a means of ensuring that the funds are spent wisely. TURN supports further consideration of this issue through a workshop and possibly through comment.

TURN also notes that the Commission considered competitive bidding to serve as a check on costs *and prices*. DRA's proposed modifications address costs. D.07-12-054 should be further modified to require the Commission to ensure that prices proposed by applicants are reasonable and affordable, consistent with the review of prices discussed earlier in Section II. of this pleading.

V. OPEN ACCESS AND NET NEUTRALITY: THE COMMISSION SHOULD ADOPT DRA'S PROPOSAL.

DRA notes that some providers have promised to share their networks with other service providers and proposes that open access should be added as a condition for all grants. TURN supports this proposal. Networks that are being constructed with public money should be available for the widest possible access under terms and conditions that are fair, just, reasonable, and non-discriminatory. This should be clear to applicants and it will be incumbent upon the Commission and its staff to review the terms and conditions of such access.

VI. AUDITS: THE COMMISSION SHOULD ADOPT DRA'S PROPOSAL.

DRA correctly points out that PU Code § 281 requires the Commission to conduct both financial and performance audits to ensure that funds have been properly expended. As it stands, however, the language contained in CASF resolutions appears to indicate that audits are subject to Commission discretion when they are clearly a statutory requirement.

DRA has proposed modifying D.07-12-054 to add an ordering paragraph containing language that clearly reflects the statutory audit requirements. DRA's language also provides that all material related to the audit are publicly available, thereby ensuring transparency of the CASF program. DRA's proposed modifications are reasonable and should be adopted.

VII. CONCLUSION

DRA's Petition addresses important deficiencies in the Commission's current CASF process. The goal of CASF is to help foster the availability and use of high quality broadband service throughout California. Transparency, public input, non-discriminatory availability of networks and the responsible use of public funds are essential improvements to the CASF process. We respectfully ask that the Commission grant DRA's Petition, with the revisions proposed by TURN.

Dated: October 14, 2010

Respectfully submitted,

_____*/S/ Regina Costa*___

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CERTIFICATE OF SERVICE

I, Larry Wong, certify under penalty of perjury under the laws of the State of California that the following is true and correct:

On October 14, 2010, I served the attached:

RESPONSE OF THE UTILITY REFORM NETWORK TO THE DIVISION OF RATEPAYER ADVOCATES PETITION FOR MODIFICATION OF DECISION 07-12-054, IMPLEMENTING CALIFORNIA ADVANCED SERVICES FUND (CASF)

on all eligible parties on the attached list **R.06-06-028** by sending said document by electronic mail to each of the parties via electronic mail, as reflected on the attached Service List.

Executed this October 14, 2010, at San Francisco, California.

/S/
Larry Wong

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