

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**Communications Division
Carrier Oversight and Programs Branch**

**RESOLUTION T-17343
September 22, 2011**

R E S O L U T I O N

**Resolution T-17343 Approval of a Revised Surcharge Rate of 0.14% for
the California Advanced Services Fund Effective November 1, 2011**

Summary

This Resolution adopts a revised surcharge rate of 0.14% for the California Advanced Services Fund (CASF) effective November 1, 2011, until further revised by the Commission. All certificated telecommunication carriers shall apply this new surcharge rate on revenues collected from end-users for intrastate telecommunications services effective November 1, 2011, and thereafter. Carriers shall submit all surcharge fees collected to the Commission.

Background

On December 20, 2007, the Commission approved Decision (D.) 07-12-054 which established the two-year CASF program to provide matching funds of up to 40% of the total project costs for the deployment of broadband infrastructure in unserved and underserved areas in California. As provided for in this decision, the total grant money authorized and allocated for broadband infrastructure projects was \$100 million funded by a 0.25% surcharge on revenues collected from end-users for intrastate telecommunications services effective January 1, 2008.

On February 12, 2008, Senate Bill (SB) 1193 (Chapter 393, Stats. of 2008) established the CASF as a new public purpose program and amended Public Utilities Code Sections (PU Code §§) 270 and 281 to incorporate additional language on the CASF. PU Code §281(b)(3) limited the CASF surcharge revenue collection to \$100 million. On December 17, 2009, the Commission approved Resolution T-17248 which revised the surcharge from 0.25% to 0.00% on end-user bills since it was projected that the surcharge revenue limit of \$100 million would be reached in December 2009. Any excess funds over the allowable limit would require a true-up adjustment.

On September 25, 2010, SB 1040 (Chapter 317, Stats. of 2010) amended PU Code §281 by extending the CASF program beyond January 1, 2013. Besides continuing the broadband infrastructure grant program established by the original legislation, SB 1040 established two new elements within the CASF program: The Rural and Urban Regional Broadband Consortia Account and The Broadband Infrastructure Revolving Loan Account. SB 1040 also provided \$125 million (not exceeding \$25 million per year) to fund three programs starting January 1, 2011, broken down as follows: The Broadband Infrastructure Grant Account - \$100 million; The Rural and Urban Regional Broadband Consortia Account - \$10 million; and, The Broadband Infrastructure Revolving Loan Account - \$15 million.

Discussion

In this Resolution, the Commission adopts a 0.14% surcharge effective November 1, 2011. This surcharge was developed using an estimated billing base of \$20.80 billion in Fiscal Year (FY) 2011-12 and FY 2012-13 and applying the excess revenue amount of \$15,590,000 already collected in 2008-2009 beyond the \$100 million limit authorized in SB 1193.¹ Based on the Communication Division's projections, total revenue collections from November 1, 2011, through December 31, 2012, will reach approximately \$33.973 million.² The estimated surcharge collection for the 14-month period plus the \$15,590,000 will total \$49,563,000, which is slightly lower than the cap limit of \$50 million for calendar years 2011 and 2012.

All certificated telecommunications carriers shall revise the CASF surcharge rate from 0.00% to 0.14% on revenues collected from end-users for intrastate telecommunications services effective November 1, 2011, and thereafter, until further revised by the Commission. All such carriers shall submit CASF surcharge fees collected to the Commission using the Commission's Telecommunications User Fee Filing System (TUFFS).

Advice Letter Filing

Consistent with Resolution T-16901, dated December 2, 2004, AT&T (formerly SBC) shall file an Advice Letter on or before October 7, 2011, modifying the CASF surcharge from 0.00% to 0.14% to take effect on November 1, 2011, and thereafter, until further revised by the Commission. AT&T is not required to inform competing carriers of tariff changes which comply with this Resolution.

¹ \$15,590,000 is based on the CPUC's Certification of Year-End Financial Reports (August 10, 2010) to the State Controller's Office, FY ending June 30, 2010.

² The surcharge rate of 0.14% applied to a monthly billing base of approximately \$1,733,333,333 generates total surcharge remittances for 14 months of \$33.973 million. Excess collection in 2008-09 equals \$15,590,000. \$ 33,973,333 plus \$15,590,000 equals \$ 49,563,333.

Comments

In compliance with PU Code §311(g), a notice letter was e-mailed on August 23, 2011, to all certificated telecommunications carriers and the parties on the service list of R.10-12-008 informing these parties that this draft Resolution is available at the Commission's website <http://www.cpuc.ca.gov/static/documents/index.htm> and is available for public comments. This letter also informed parties that the final conformed Resolution adopted by the Commission will be posted and available at this same website.

On September 7, 2011, the Division of Ratepayer Advocates (DRA) submitted comments on the draft resolution urging the Commission to delay consideration of the resolution until the Commission adopts new rules in Phase II of Rulemaking (R.) 10-12-008, which is anticipated before 2012. DRA argues that Phase II provides an opportunity for the Commission to establish critical requirements for broadband applications and project completion, which will help ensure the Commission awards broadband funds in the most accountable and transparent ways to achieve the program's intended goals.

DRA further argues that any increase or adjustment to the surcharge rate can be postponed, given the slow dissemination of CASF funding and over collection of \$15,590,000 in 2008-09. DRA notes that any excess funds in the CASF program provide the Commission with a buffer of funding while Phase II decisions are made, and that is premature to pinpoint the appropriate surcharge rate until the new policies are known since they may affect assumptions about the surcharge.

No other party submitted opening and reply comments on the draft resolution.

Commission's Response to DRA's Comments

We disagree with DRA that we should delay consideration of this resolution until after we adopt new rules under Phase II of R.10-12-008 regarding CASF infrastructure grant and revolving loan program requirements. The collection of the CASF surcharge revenues is separate from the expenditures of the funds, which will be governed by the revised and/or new rules that the Commission is expected to adopt for the CASF infrastructure grant and revolving loan accounts under Phase II of R.10-12-008. PU Code Section 281(b)(3) authorized the Commission to collect the additional surcharge revenues not to exceed \$125 million beginning with the calendar year starting on January 1, 2011, through the 2015 calendar year. Therefore, the legislation only provided the Commission a five-year window to collect the additional revenues required to fund the expanded CASF program. This resolution will trigger surcharge collection effective November 1, 2011, already a ten-month delay from the authorized start of the collection period. Any further delay of the surcharge collection will only result in higher surcharge rates imposed on telecommunications customers during the remainder of the five-year period in order to collect the total funding

required under the law. Contrary to DRA's view, the surcharge rate is determined based on the projected revenue base of all telecommunications carriers paying into the CASF fund and the total amount authorized to be collected for the program, and not affected by policies or rules regarding the expenditures of the funds.

Furthermore, we recognize that there are still funds available from the initial \$100 million that were collected in 2008-2009 given the number of CASF infrastructure projects that have been funded to date. These remaining funds plus the \$15.59 million already collected certainly gives us the ability to award CASF grants (both for infrastructure projects and consortia groups) and provide loans for infrastructure projects in the immediate future. However, we disagree with DRA that we should hold off on collecting the additional revenues allowable under the law for the 2011 and 2012 calendar years since this puts the Commission at risk of not having enough funds on hand should there be an increase in project applications once the revised/new rules are adopted in R.10-12-008. Adjustments to surcharges do not take into effect immediately and time needs to be factored in for telecommunications carriers to institute the revised surcharge in their billing systems. Thus, we see no reason not to adjust the surcharge consistent with the legislation as proposed by Communications Division.

Findings

1. In Decision (D.) 07-12-054, the Commission established the two-year California Advanced Services Fund (CASF) program to provide matching funds of up to 40% of the total project costs for the deployment of broadband infrastructure in unserved and underserved areas in California.
2. D.07-12-054 authorized and allocated \$100 million for broadband infrastructure projects funded by a 0.25% surcharge on revenues collected from end-users for telecommunications intrastate services, effective January 1, 2008.
3. In February 2008, Public Utilities Code Sections (PU Code §§) 270 and 281 were amended as a result of the enactment of Senate Bill (SB) 1193 establishing the CASF as a new public purpose program.
4. PU Code §281(b)(3) limited the CASF surcharge revenue collection to \$100 million.
5. In December 2009, the Commission approved Resolution T-17248 revising the surcharge from 0.25% to 0.00% since the \$100 million limit would be reached by December 2009.
6. On September 25, 2010, SB 1040 amended PU Code §281 extending the CASF program beyond January, 1, 2013. Among other changes, SB 1040 provided \$125 million to be collected through surcharges, but not to exceed \$25 million per year.

7. The CASF surcharge rate should be increased to 0.14% effective November 1, 2011.
8. Applying excess funds of \$15,590,000 collected from 2008-09, the Communications Division projects collecting \$ 33.973 million in surcharges for 14 months. The total amount of CASF surcharge collected as of December 31, 2012, is expected to be \$49.563 million, slightly lower than the cap limit of \$50 million for calendar years 2011 and 2012.
9. All certificated telecommunications carriers should apply the CASF surcharge rate of 0.14% on revenues collected from end-users for intrastate telecommunications services effective November 1, 2011, and thereafter, until further revised by the Commission and should submit all surcharge fees collected to the Commission using the Commission's Telecommunications User Fee Filing System (TUFFS).
10. In accordance with Resolution T-16901, dated December 2, 2004, AT&T should file an Advice Letter on or before October 7, 2011, modifying the CASF surcharge rate from 0.00% to 0.14% to take effect on November 1, 2011, and thereafter, until further revised by the Commission.
11. Copies of the notice letter advising parties of the availability of this draft Resolution and the conformed Resolution, when adopted by the Commission, on the Commission's website were e-mailed on August 23, 2011, to all certificated telecommunications carriers and the parties on the service list of R.12-10-008.
12. On September 7, 2011, the Division of Ratepayer Advocates submitted comments on the draft resolution. The Commission has not found it necessary to modify this Resolution in response to DRA's comments.

THEREFORE, IT IS ORDERED that:

1. The California Advanced Services Fund (CASF) surcharge rate of 0.14% is adopted effective November 1, 2011, until further revised by the Commission.
2. All certificated telecommunications carriers shall revise the CASF surcharge rate from 0.00% to 0.14% on revenues collected from end-users for intrastate telecommunications services effective November 1, 2011, and thereafter, until further revised by the Commission and shall submit all collected surcharge fees to the Commission.

