

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



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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.

Rulemaking 10-12-008
(Filed December 16, 2010)

**OPENING COMMENTS OF
VERIZON CALIFORNIA INC. (U 1002 C)
RESPONDING TO OIR QUESTIONS**

January 21, 2011

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TABLE OF CONTENTS

	<u>PAGE</u>
INTRODUCTION	1
DISCUSSION	2
ANSWERS TO SPECIFIC OIR QUESTIONS	4
1. Should the CASF funding cap of 40% be increased, considering that [i] some applicants have been unable to secure the 60% matching funds, and [ii] funds from the ARRA are no longer available?	4
2. Should the CASF definitions be revised to conform with the NTIA/RUS definitions of unserved and underserved areas [Federal Register/Vol. 74. No. 130, July 9, 2009, Joint Notice of Funding Availability for the Broadband Technology Opportunities Program (BTOP) and the Broadband Initiatives Program (BIP)]? Alternatively, should the Commission revise these definitions based on the goals set forth in the 2007 report of the California Broadband Task Force?	6
3. Should the process be fully transparent as proposed by DRA	7
4. Should the Commission require an applicant to provide additional public notice of its application targeted to households in its proposed area (as suggested by The Utility Reform Network in responding to DRA's petition)?	10
5. Should the scoring criteria or weights be modified? (We note that the scoring criteria have so far only been applied once.)	11
6. Should the Commission increase the benchmark speed to four mbps download and one mbps upload?	11
7. Should the Commission revise the criteria to include an industry standard cost and/or a ceiling cost per household? If so, how should the industry standard and ceiling cost per household be determined? Should the industry standard or ceiling cost depend on the proposed technology?	12
8. Should the Commission require a recipient to share its CASF-funded network with competitive providers?	13

9. Should there be a cap on monthly rates and/or should installation and other charges be waived for a specified period? 14

CONCLUSION 15

TABLE OF AUTHORITIES

California Public Utilities Commission Authorities

D.07-12-054	7, 8, 10, 11
D.09-07-020	9
Resolution T-17143.....	4,6,14
Resolution T-17238.....	9, 10, 11

Statutes and Regulations

Public Records Act, Govt. Code §§ 6250.....	9
47 U.S.C. § 251	13

Federal Case Law

<i>United States Telecom Ass'n v. FCC</i> , 359 F.3d 554 (D.C. Cir.) ("USTA II"), <i>cert. denied</i> , 125 S. Ct. 313 (2004).....	13
---	----

Other Authorities

2007 California Broadband Taskforce Report.....	6,7
Senate Bill 1040.....	1,2
Final Report of the California Broadband Task Force, January 2008	3
General Order 66-C	8,9
Speech by Anthony J. Melone, Executive Vice President and Chief Technology Officer for Verizon at the Internet Caucus Advisory Committee's (ICAC) "7th Annual State of the Net Conference" (Washington, DC, January 19, 2011)	15

Verizon California Inc. (Verizon) respectfully submits these opening comments in response to Ordering Paragraph 6 of the Order Instituting Rulemaking (OIR) seeking comments on suggested revisions to the California Advanced Services Fund (CASF) and implementation of two new accounts established in Senate Bill 1040.

INTRODUCTION

In 2007 the Commission created the \$100 million CASF to encourage the deployment of broadband infrastructure to unserved and underserved areas. The CASF required applicants to provide 60% of the funds for a particular project, but allowed 80% funding from the federal American Recovery and Reinvestment Act (ARRA).¹ Since its inception two years ago, the CASF program awarded approximately \$57.87 million in grants.²

The California Legislature in 2010 adopted Senate Bill 1040 increasing the size of the CASF fund from \$100 million to \$225 million. The additional \$125 million is allocated to three CASF accounts: the Broadband Infrastructure Grant Account (\$100 million)³; the Rural and Urban Regional Broadband Consortia Grant Account (\$10 million) (the Consortia Fund); and the Broadband Infrastructure Revolving Loan Account (\$15 million) (the Revolving Loan Fund). The OIR not only seeks to implement these latter two new accounts, but also to review possible changes to the CASF program.

¹ Order Instituting Rulemaking (OIR) 10-12-008 at 4.

² OIR, Appendix (CASF Funding as of October 14, 2010). This number is an approximation because several applicants were provided CASF grants contingent upon receiving ARRA grants, yet some applicants have not meet that contingency.

³ This fund is already an account under CASF. As such, it is not a new account. OIR at 6.

DISCUSSION

A review of the CASF program is certainly appropriate, but as a first step, this review would be well-served with Staff first evaluating the effectiveness of the program to date. Information such as what unserved and underserved areas remain after funds were granted, the number of households passed with new broadband infrastructure and the actual broadband availability levels attributable to the CASF program are critical to determining the success or lack thereof the program and what lessons may have been learned. Staff is conducting such a performance audit⁴ and the Commission should adopt a procedural schedule that provide the parties the benefit of the Communications Division's report prior to additional comments or workshops (if any) in this proceeding. Since there were insufficient grant applications to deplete the fund and over \$40 million still remain in the CASF fund, there appear to be no time sensitivities associated with the OIR's review to proceed in this manner.

In Verizon's answers to the OIR's questions related to the CASF review set forth below,⁵ the number of grant applicants is of particular concern in responding to these questions. That all geographic areas for which applications were received save one had but a single bidder indicates that the CASF program

⁴ On January 13, 2011, the Communications Division issued a data request to all CASF grant recipients in connection with its preparing an "interim Performance Audit report of the implementation and effectiveness of the [CASF]". Verizon recommends that as part of the review, CD consider all ARRA (including NTIA) projects (even if not funded with CASF funds) and in its report highlight the remaining unserved areas that should be the focus of future grant applications.

⁵ SB 1040 also creates two new funds, the Consortia Fund and the Revolving Loan Fund. The issues related to implementing these funds are distinct from the larger fund and likely not impacted by Staff's Performance Audit. Therefore, the Commission should address implementation of these funds while staff performs its audit. Verizon reserves for reply commentary on the OIR's questions related to these funds.

has suffered from either a lack of participation or a problem with the criteria of the CASF program. Another such indication is the number of areas available for investment, but which did not receive any applications. According to the Final Report of the California Broadband Task Force, “[n]early 2,000 communities—located in every region from the Southern Border to the North Coast—are still without broadband access.”⁶ The Task Force notes that many areas are also underserved, stating as an example that “less than half of [Northern Sierra] households are able to subscribe to services greater than 1 Mbps.”⁷ CASF received only 89 applications (and only 41 of those were funded).⁸ Where so many areas are available for grant funds, a program with the right incentives should attract enough applications to deplete the fund, but that was not the case here.

Given these facts, review of the CASF program should address how to provide the correct incentives to encourage applications. This is especially important now that ARRA funds are no longer available. To this end, Verizon recommends—as it has in past comments—increasing the CASF match from 40% to 80%.⁹ Verizon also urges the Commission to reject proposals that serve as disincentives to participation. Adopting suggestions—like those of the Division of Ratepayer Advocates (DRA)—to eliminate confidentiality provisions, or impose (i) broadband price controls, (ii) open access requirements and (iii) net

⁶ Final Report of the California Broadband Task Force, January 2008, at 33.

⁷ *Id.*

⁸ OIR, Appendix.

⁹ Verizon's proposal is to increase the match within the parameters of the fund as constituted, which should not be construed to suggest an increase in the overall fund size.

neutrality rules, will certainly reduce the number of firms willing to submit applications for CASF funds. These suggestions should promptly be rejected.

ANSWERS TO SPECIFIC OIR QUESTIONS

- 1. *Should the CASF funding cap of 40% be increased, considering that [i] some applicants have been unable to secure the 60% matching funds, and [ii] funds from the ARRA are no longer available?***

Verizon recommends increasing the CASF funding cap from 40% to 80%. An increased funding level will yield benefits to consumers sooner, fulfilling the Commission's stated goal of spurring broadband deployment in California, especially in unserved areas. CASF is primarily designed to make broadband service available to those without any level of broadband today.¹⁰ The experience with CASF since its inception shows that—as currently formulated—it has been unable to attract sufficient bidders to meet this primary goal. Indeed, most CASF grants went to projects that included underserved areas (\$52.96 million¹¹), with only \$4.91 million in grants for unserved area projects,¹² thus failing to provide substantial grants to the areas most in need of CASF money. This experience suggests that the Commission would have received even fewer applications for unserved areas had ARRA funds not been available to bidders. To encourage infrastructure deployment in unserved areas while counteracting the loss of ARRA funds, the Commission should increase the funding cap from 40% to 80%.

¹⁰ Resolution T-17143 at 14.

¹¹ OIR at Appendix (CASF Funding as of October 14, 2010).

¹² *Id.*

The 40% matching requirement is simply an insufficient incentive to attract widespread interest from firms to invest in high-cost broadband projects in uneconomic areas. This was the case for Verizon, which submitted one unserved-area project for funding, but studied and rejected several more substantial projects because of their cost. In analyzing each potential project, Verizon conducted a financial analysis comparing capital costs and future estimated revenues. In the case of the high-cost projects Verizon analyzed, the potential CASF funding limit at 40% of capital costs was insufficient to offset the limited revenue opportunities and high costs in low density rural areas.

Increasing the percentage funding match would certainly improve the financial attractiveness of broadband projects in very rural areas. For example, a \$5 million capital project with estimated future cash flows of \$1 million, on a present value basis, would be Net Present Value (NPV) negative by \$2 million at the current 40% matching level. If the CASF matching level were increased to 80%, the project would break-even with a NPV of zero.

Verizon previously recommended that the cap should be increased to 80%¹³ and continues to believe that only funding at this level will attract sufficient bidders to invest in uneconomic unserved areas.

¹³ Verizon Reply Comments on the June 9, 2009 Proposed Decision of Commissioner Chong, July 6, 2009, at 2. See also Comments of Verizon California Inc. (U 1002 C) in Response to Assigned Commissioner's Ruling Soliciting Comments on Revisions in The California Advanced Services Fund Program, November 5, 2008, at 6-7.

2. ***Should the CASF definitions be revised to conform with the NTIA/RUS definitions of unserved and underserved areas [Federal Register/Vol. 74, No. 130, July 9, 2009, Joint Notice of Funding Availability for the Broadband Technology Opportunities Program (BTOP) and the Broadband Initiatives Program (BIP)]? Alternatively, should the Commission revise these definitions based on the goals set forth in the 2007 report of the California Broadband Task Force?***

The CASF program has now been in existence for two years and there has been no complaint about the impact of the current definitions used for unserved and underserved areas.¹⁴ The alternative definition for unserved areas discussed in the OIR—at least 90% of households in one or more contiguous census block areas lack access to broadband at benchmark speeds—would change the definition in an appreciable manner depending on the benchmark speed (discussed in response to Q.6 below). The Commission’s primary goal is to make broadband service available to those *without any level of broadband* today.¹⁵ The NTIA/RUS definition of unserved areas is inconsistent with this goal and therefore should not be adopted.

The alternative NTIA/RUS definition of underserved areas discussed in the OIR makes distinctions at a level of granularity that appears unnecessary to advance the goals of the CASF program. Because the NTIA/RUS definition depends on specific market information (an underserved area is one where only 50% of households have access or only 40% of the households subscribe to broadband service),¹⁶ much greater research on the part of the applicant would

¹⁴ DRA has recommended changing the speeds, but that is a distinct point addressed later in these comments.

¹⁵ Resolution T-17143 at 14 (emphasis added).

¹⁶ OIR at 10.

be required than with the CASF definition that defines underserved as an area where no provider offers 3/1 Mbps service. Instead of easing administration of the program or assisting in attracting bidders, such granularity might serve only to complicate administration. In addition, this could open many areas that currently have a broadband provider offering 3/1 Mbps. Thus, an area would be classified as underserved where 40% of the households in a census block area subscribed to 3/1 service. With so many unserved communities in the state, the CASF's goal should not be to provide multiple broadband offerings in census block groups that—but for a change in definition—already have broadband infrastructure.

Finally, the California Broadband Task Force definition of underserved would certainly add unnecessary complexity to the program, as it would require assessments of poverty levels, and the level of saturation of current and next generation technologies.¹⁷ It should not be adopted.

3. *Should the process be fully transparent as proposed by DRA?*

In its Petition to Modify D.07-12-054 implementing CASF, DRA claims that CASF applications should not be treated as confidential and should be served

¹⁷ 2007 California Broadband Taskforce Report at 53 (“When reviewing actions to increase broadband availability, an underserved area might refer to a census tract, or other reasonable designation, exhibiting high rates of poverty, and not located in a saturated market. A saturated market for current-generation technologies is one in which these technologies are available to a significant percent of the total potential of residential subscribers. For next-generation infrastructure, a saturated market is one in which next-generation infrastructure has been physically deployed. Current-generation technologies include services that offer combined speeds between approximately 1-10 Mbps. Next-generation infrastructure includes that which is capable of providing services around 50 Mbps total or better.”).

broadly in order to facilitate public comment.¹⁸ Applications are currently submitted under General Order 66-C, which has long protected from public disclosure records of “a confidential nature,” in particular information that would place the regulated company “at an unfair business disadvantage” or as to which the public interest in withholding outweighs the public interest in disclosure. As it should, the Commission requires detailed information in applications.

Specifically, an application for funds must include, among other items:

- a. Description of the provider’s current broadband infrastructure and map of current service area by census block group;
- b. Description of proposed broadband project plan for which CASF funding is being requested, including download and upload speed capabilities of proposed facilities. . . .
- c. Geographic locations by census block group where broadband facilities will be deployed. Boundaries of the specific area to be served by the project, with map by census block group, along with a verifiable showing that the area is unserved or underserved;
- d. Estimated number of potential new broadband subscribers.
- e. Schedule for deployment, with commitment to complete build out within 18-24 months of the grant of the application. . . .
- f. Proposed budget for the project, with a detailed breakdown of cost elements, and including source, amount, and availability of matching funds to be supplied by applicant, and the CASF funds requested. . . .
- g. Proposed retail price per MBPS for new broadband service. . . . and
- i. Financial qualifications to meet commitments.¹⁹

¹⁸ Division of Ratepayer Advocates’ Petition for Modification of Decision 07-12-054, Implementing California Advanced Services Fund (CASF), filed September 13, 2010 (DRA Petition) at 5-7.

¹⁹ D.07-12-054, FOF 27.

This constitutes detailed information well-recognized to be of a confidential nature, e.g., detailed network maps usually protected for security reasons, and specific projected plans usually protected for competitive reasons. The Commission itself has recognized the need to withhold this information to protect confidentiality.²⁰ Moreover, upon submission of an application containing confidential information, it is the Commission staff's role to assess the technical capabilities of the applicant or applicants and recommend one for funding; public disclosure of the application will not assist staff in this function.

Once a proposed recipient is identified, under the current practice, public comment is invited on the proposed project, location, and terms of proposed service. DRA alleges no specific issue or flaw with this process other than that it is "too late" for initial public input,²¹ nor does it assert any particular benefit that would result from earlier public involvement in what amounts to a technical staff review process.

In fact, DRA's allegations of "secrecy" are not only unsupported, but also contradicted by Verizon's experience with its last CASF application (the Sea Ranch project). As documented in Resolution T-17238, at a stage in which DRA alleges that secrecy continues and public input is inadequate, several local competitors submitted comments regarding current and planned service options

²⁰ D.09-07-020 at 9, n.6 ("We wish to clarify the rules governing nondisclosure of confidential information contained in CASF filings. Once a CASF application has been submitted to the Commission, the broad area proposed to be served will be available on the Commission web site. All other information contained in the application will be treated as confidential pursuant to General Order 66-C until the Commission issues a resolution awarding grants to successful applicants. After grants have been awarded, any information contained in the applications which falls within an exception in the Public Records Act, Govt. Code §§ 6250 et seq. will continue to be treated as confidential.").

²¹ DRA Petition at 6.

in the area covered by Verizon's application. As a result, Verizon revised its application, and the competitors submitted further comments for Commission staff consideration, as did a local homeowners association and DRA.²² This process appears to have served the public interest well, and DRA fails to allege why such public input is inadequate or too late. It is only after staff's review that any non-confidential version of a revised grant proposal should be subject to public review. Any earlier public participation would not add value to the process.

4. Should the Commission require an applicant to provide additional public notice of its application targeted to households in its proposed area (as suggested by The Utility Reform Network in responding to DRA's petition)?

TURN's suggestion to require an applicant to provide additional public notice of its application targeted to households would delay grants and would not add value to the program. Like DRA, TURN fails to explain the benefits of its recommended notice to residents and businesses. Without adequate explanation, TURN simply concludes that "[i]nput 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."²³ TURN states that the public could provide information about the quality of service currently available, locations with or without broadband availability and the performance of applicants currently providing similar services in the same region. Such public input would be duplicative of information submitted in applications,

²² Resolution T-17238 at 4, 6-9.

²³ 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), filed October 14, 2010, at 2.

which requires an applicant to assess whether a proposed project is in an area that is currently not being served or is underserved.²⁴ And if a particular application requires additional information from residents or businesses, staff can obtain that information, much in the same way it did with Verizon's application for the Sea Ranch project.²⁵

5. Should the scoring criteria or weights be modified? (We note that the scoring criteria have so far only been applied once.)

The scoring criteria established an objective way to select an application where multiple entities bid in the same geographic area. As the OIR notes, the criteria was only used for only one geographic area because there were not multiple bidders in any other areas.

Verizon's principal recommendation in this rulemaking seeks to make the CASF program capable of attracting multiple bidders for each remaining unserved area in California. Any modifications to the scoring criteria should be structured to increase participation, while protecting the integrity of the program.

6. Should the Commission increase the benchmark speed to four mbps download and one mbps upload?

The Commission's existing definition provides that areas with current connectivity at dial-up speeds are considered unserved, and areas currently under 3:1 download:upload speed are considered underserved.²⁶ A higher speed requirement raises a number of concerns and should not be adopted.

²⁴ See, e.g., D. 07-12-054 at OP 17.

²⁵ See Resolution T-17238 (validating CBTF map data, contacting residents to verify claims of existing service, quality and testing speeds to determine whether area was qualified as either unserved or underserved).

²⁶ D.07-12-054 at FOF 31.

Mandating a higher minimum speed would likely increase project costs. Because some broadband offerings (e.g., DSL) are more distance sensitive (higher speeds are only available to subscribers located closer to the Central Office), this suggestion could reduce the number of potential subscribers per application, driving the cost per subscriber higher, making projects even less economically feasible, and thus reducing the scope of potential applications.

In addition, raising the minimum to 4:1 MBPS would make significant areas eligible for CASF grants where existing providers offer 3:1 today, which is not an efficient outcome. Indeed, where existing providers offer 3:1 services, there is no public benefit to subsidizing additional competitors after a provider has already built broadband facilities *without any subsidy*. The Commission should be extremely hesitant to interfere with functioning markets, and should instead limit its role to limited areas in California where investing in broadband is uneconomic.

7. Should the Commission revise the criteria to include an industry standard cost and/or a ceiling cost per household? If so, how should the industry standard and ceiling cost per household be determined? Should the industry standard or ceiling cost depend on the proposed technology?

Verizon recommends against establishing a ceiling because this would be difficult to establish, serve as a disincentive to applicants, and ultimately would delay the infrastructure deployment goal of the CASF program.

In regards to how a ceiling cost per household would be determined, DRA proposed in its petition to determine the “actual market costs of installing broadband without ratepayer funding” and then requiring that proposed project

costs “must be at or below” such costs.²⁷ This proposal is unrealistic. The proposal ignores the fact that costs are site-specific and vary based on a variety of factors that would be extremely difficult, if not impossible, to apply to actual individual project areas in a “benchmarking” analysis focused on uneconomic, hard-to-serve areas.²⁸ Moreover, establishing cost estimates for broadband infrastructure projects could prove a very lengthy and difficult undertaking, further delaying CASF grants and broadband infrastructure deployment.

8. Should the Commission require a recipient to share its CASF-funded network with competitive providers?

In its petition, DRA urges that the Commission enforce open access and net neutrality obligations as a condition of CASF funding.²⁹ The Commission should reject these proposals. DRA ignores the lengthy and contentious history of unbundling requirements, the negative impact on investment and technological innovation and the ultimate demise of the FCC’s unbundling regime.³⁰ Imposing open access and net neutrality requirements on recipients of CASF funds will only ensure fewer applications, when experience with the CASF program shows the need for increasing the number of applications. Given the lack of market incentives to invest in the uneconomic areas CASF targets, the Commission should avoid imposing regulatory disincentives to investments supported with CASF funds.

²⁷ DRA Petition at 12.

²⁸ *Id.*

²⁹ DRA Petition at 13.

³⁰ See e.g., *United States Telecom Ass’n v. FCC*, 359 F.3d 554 (D.C. Cir.) (“*USTA II*”), cert. denied, 125 S. Ct. 313, 316, 345 (2004) (vacating FCC rules governing access to certain unbundled network elements under 47 U.S.C. § 251).

Moreover, the Commission should steer clear of the controversial net neutrality debate in connection with the CASF program, as this program is not an appropriate forum for that issue. The FCC recently adopted broad net neutrality rules, but these issues are not settled at the federal level and any action the Commission takes relying on the FCC's net neutrality rules would likely be upset by subsequent Congressional or court actions.³¹ Attaching net neutrality obligations to CASF grants will also discourage participation in the program.

9. *Should there be a cap on monthly rates and/or should installation and other charges be waived for a specified period?*

The Commission cannot regulate the prices of broadband providers and should not impose a cap on monthly rates and/or require waiver of installation and other charges. Doing so would add more disincentives thereby reducing the number of potential bidders and harming instead of advancing the CASF program. Price controls are, in any event, unnecessary because staff is in a position to evaluate proposed projects and determine whether they warrant the expenditure of public funds.

The CASF program focuses on currently unserved and underserved areas, so an early emphasis on affordability and adoption is premature.

[T]his program is primarily designed to make broadband service available to those *without any level of broadband today*. A focus on pricing is inapposite in the situation where there is no service today.³²

Moreover, these broadband prices may be impacted by technological changes, such as the rapid deployment of high-speed mobile broadband (in

³¹ *Id.* (noting the potential for court challenges).

³² Resolution T-17143 at 14 (CASF Application and Scoring Criteria)(emphasis added).

excess of CASF's 3:1 benchmark) found with the new LTE or 4G releases. Verizon Wireless, for example, will roll out 4G LTE within the next three years covering virtually the entire country, reaching two-thirds of the U.S. population by mid-2012. Relevant to this proceeding, in 2010, Verizon Wireless announced an initiative to bring LTE broadband to rural America through partnerships with smaller wireless companies, providing them access to Verizon Wireless' 700 MHz spectrum and allowing these rural operators to deliver 4G services. Verizon Wireless has agreements with several rural operators that together "cover 1.7 million pops and 50,000 square miles" and "very strong interest from some 240 entities."³³ Such rapid deployment and innovation may provide consumers another broadband choice even in the hard-to-serve areas.

CONCLUSION

The Commission should schedule further steps in this OIR so that parties benefit from the pending Communication Division's ("CD") CASF Performance Audit Review report, initially focusing on implementing the new Consortia and Loan funds. Once CD's report is available, the Assigned Commissioner should issue a new ruling regarding changes to the CASF program that takes into account CD's analysis. In any event, the CASF program must continue to focus on unserved areas as its primary goal, and correct the incentives to ensure a substantial increase in the number of applications. Doing so will yield benefits to

³³ Speech by Anthony J. Melone, Executive Vice President and Chief Technology Officer for Verizon at the Internet Caucus Advisory Committee's (ICAC) "7th Annual State of the Net Conference" (Washington, DC, January 19, 2011).

consumers sooner, fulfilling the Commission's stated goal of expeditiously spurring broadband deployment in California.

DATED: January 21, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that: I am over the age of eighteen years and not a party to the within entitled action; my business address is 2535 W. Hillcrest Drive, Newbury Park, CA 91320, I have this day served a copy of the foregoing, **OPENING COMMENTS OF VERIZON CALIFORNIA INC. (U 1002 C) RESPONDING TO OIR QUESTIONS** by electronic mail to those who have provided an e-mail address and by U.S. Mail to those who have not, on the service list.

I declare under penalty of perjury that the foregoing is true and correct.
Executed this 21st day of January, 2011 at Newbury Park, California.

/s/ Jacque Lopez
JACQUE LOPEZ

Service List: R.10-12-008



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[TOP OF PAGE](#)
[BACK TO INDEX OF SERVICE LISTS](#)