

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.

Rulemaking 06-06-028
(Filed June 29, 2006)

**DIVISION OF RATEPAYER ADVOCATES' PETITION FOR
MODIFICATION OF DECISION 07-12-054, IMPLEMENTING
CALIFORNIA ADVANCED SERVICES FUND (CASF)**

I. SUMMARY

The Division of Ratepayer Advocates (DRA) hereby requests that the Commission modify Decision (D.) 07-12-054, the decision implementing a \$100 million broadband infrastructure subsidy program, funded with public monies, called the California Advanced Services Fund (CASF).

DRA's proposed changes, summarized below, primarily address the Decision's erroneous assumption that competition to provide broadband service will keep prices low, as well as the lack of transparency in the application review process. The Commission has a statutory obligation to review how the public's money is spent, and DRA's requested modifications will assure that the Commission effectively carries out this responsibility.

- *Transparency.* Applications for CASF funding should be open to the public and subject to a public comment process.
- *Affordability/Adoption.* The program should do more to encourage adoption of high speed broadband in unserved/underserved communities, by capping monthly rates and prohibiting installation charges, and requiring funding recipients to submit plans with their applications

explaining how they will ensure that customers adopt and can afford their broadband offerings.

- *Speed.* The CASF minimum speed should at least approximate the Federal Communication Commission's (FCC) 4 megabits per second (Mbps) download and 1 Mbps upload minimum required speeds (4/1), rather than continuing to use a benchmark of 3/1 speeds.
- *Cost control.* The CASF should not give funding to everyone that seeks it regardless of the per-household cost of installing broadband. The CASF has funded projects costing tens of thousands of dollars per household; at this rate, California will never reach near universal adoption. Because competition that the Commission assumed would control costs did not occur, the Commission should control project costs, including by waiving installation charges, temporarily capping service fees, and/or conducting cost reviews.
- *Open access and net neutrality.* As a condition of receiving grant funding, providers should be required to share their CASF-funded networks with competitive providers. The Commission has the authority to make the open access commitment binding on all entities who receive CASF funding.
- *Audits.* Each Commission resolution approving CASF funding should contain a mandatory project audit provision, and the public should have access to all audit data.

Finally, the Commission's Rules of Practice and Procedure require that a Petition for Modification be filed within 12 months of a decision's issuance. However, the rules allow a party to file a Petition after the twelve-month period if the party provides a reason why it could not have filed sooner. In this case, DRA could not have filed this Petition within the 12-month period because the need for the changes we request in this Petition was not apparent until after the Commission

began approving CASF funding requests in earnest in late 2009 and early 2010. Thus, the Commission appropriately may consider and grant this Petition.

II. BACKGROUND

In D.07-12-054, the Commission "established a process for promoting broadband deployment in unserved and underserved areas of California through the CASF program...."¹ The program was funded with \$100 million of ratepayer dollars taken from the California High Cost Fund-B (CHCF-B).²

The Commission granted funding to only one project in the CASF's first year of operation, for \$372,976.³ The Commission granted the lion's share of funding in late 2009 and early 2010, long after the December 2007 issuance of the CASF decision. This increased pace of broadband funding came about because of the American Recovery and Reinvestment Act (ARRA), which supplemented CASF funding with matching federal grants. The Commission approved grants totaling \$64 million – two thirds of the entire CASF fund – conditioned on the grant recipients receiving matching ARRA federal funding.⁴ Because ARRA funding did not come through for most of the proposed projects,⁵ the Commission later rescinded much of its conditional CASF funding. By DRA's calculations, available CASF funds now amount to approximately \$53 million, although that number likely will change while this Petition is under consideration.⁶

¹ D.07-12-054 at 7-8. The Commission later issued two Resolutions describing CASF processes, T-17143 and T-17233.

² The process for taking CHCF-B funds for the CASF is described in D.07-09-020 at 53-72, but is not directly relevant here.

³ T-17182 (November 21, 2008).

⁴ 2009: T-17224, T-17229, T-17234, T-17240, T-17242, T-17236, T-17241, T-17232, T-17246; 2010: T-17232, T-17246.

⁵ *See, e.g.*, T-17272 (\$38 million rescinded); T-17280 (\$7.8 million rescinded).

⁶ T-17279 at 2. As of May 20, 2010, the Commission has granted \$12.75 million for unserved areas and \$41.28 for underserved areas.

Thus, almost half of the original \$100 million in CASF funding has not been awarded. Further, the Legislature has, as of this writing, extended the CASF program into 2013 and substantially increased CASF funding. *See* Senate Bill 1040, available at <http://www.leginfo.ca.gov/cgi-bin/postquery>. In light of these facts, it is now a good time to examine the program and improve upon its deficiencies. Doing so may result in better projects, more competition, increased transparency, and better value for ratepayers' scarce funds. It is in this spirit that DRA proposes the changes described in this Petition.

III. DRA COULD NOT HAVE FILED THIS PETITION WITHIN ONE YEAR OF THE DECISION'S ISSUANCE; THUS, THE COMMISSION MAY DEEM THIS PETITION TIMELY

Under the Commission Rule 16.4, a party must either file its Petition for Modification within 12 months of the effective date of the decision, or explain why it could not file within that period.⁷ DRA is entitled to file a Petition for Modification more than 12 months after the relevant decision's issuance because the Commission did not start disbursing CASF funds until long after the 12-month period had expired.

The level of interest in the program was low and competition for funding nonexistent well after the program was underway. Further, the Commission did not approve Resolution T-17143, which set forth the process for carrying out the CASF program, until June 12, 2008, more than six months after the CASF decision was issued on December 20, 2007.

Indeed, until February 2009, after the expiration of the one-year deadline, the amount of CASF funding awarded was only \$372,976, less than 1/100th of the total CASF fund.⁸ The Commission awarded the bulk of the funding more than two

⁷ *See also* Pub. Util. Code § 1708; D.07-11-005, 2007 Cal PUC LEXIS 647, at *3-*4 (granting Petition for Modification filed more than 2 years after decision where proper showing made); D.08-06-011, 2008 Cal PUC LEXIS 229 at *6-*7 (same, where facts about Commission-authorized program did not become apparent until after 12 months had passed).

⁸ Resolution T-17182.

years after it issued D.07-12-054. Only nine months ago, the Commission awarded almost \$40 million,⁹ much of which it has since rescinded.

On July 9, 2009 – 18 months after the issuance of D.07-12-054 – the Commission acknowledged the dearth of program applicants and approved Resolution T-17233, which allowed new types of entities to apply for CASF program funds.¹⁰ To increase applications, the Commission allowed entities without a Certificate of Public Convenience and Necessity (CPCN) or wireless registration that were also seeking ARRA funding to apply for matching CASF grants.¹¹ This change caused a significant increase in funding requests and awards (although, as noted above, the Commission has since rescinded most of the awards for lack of ARRA funding).

Thus, the program never got going until well after the presumptive 12-month deadline for filing Petitions for Modification, and therefore it is appropriate to consider the matter now.

IV. DISCUSSION

A. Transparency: Applications Should be Publicly Available and Subject to Public Review and Comment

The Commission gave CASF applications broad confidentiality protection, even though there was no documented need for such treatment. *See* D.07-12-054 at 30, 2007 Cal PUC LEXIS 583, at *46 ("Any service provider seeking CASF funding shall be required to submit the following data to the Commission... subject to appropriate and mutually agreed upon confidentiality provisions...."). The Commission nowhere justified this level of protection; it simply granted it with

⁹ T-17232 (December 3, 2009) awarded \$19 million; T-17239 (January 21, 2010) awarded \$18 million (although the award was subsequently rescinded after the applicant failed to secure ARRA funding).

¹⁰ *See also* D.09-07-020 (also addressing ARRA funding).

¹¹ Resolution T-17233, adopted by the Commission on October 29, 2009, approved CASF application requirements for broadband providers/applicants other than holders of telecommunications CPCNs and registered wireless providers.

limited discussion. Thus, the Commission erroneously assumed the need for confidentiality with no evidence that it was necessary.

Currently, the Commission discloses only the Census Block Groups and Zip Codes an applicant proposes to serve on the CASF webpage seven days after the Commission receives the application. The Commission believes that this disclosure will prompt any party who wishes to submit a competing application to do so.¹² Though this information has served to make the maps more accurate by identifying areas that are already served, the current process allows no public input on an application until the Commission issues a Draft Resolution approving the project.

This assumption of a need for confidentiality runs counter to the Commission's general obligation to conduct its business in public.¹³ Indeed, any party seeking confidential treatment must bear a "strong burden of proof,"¹⁴ and here, no proof whatsoever supported the Commission's blanket decision to treat virtually all details about a CASF application as confidential.

In practice, the confidentiality protections have led to an unprecedented level of secrecy in awarding millions of dollars of ratepayer funding. Under the current process, the Commission only receives public input after it has tentatively decided to fund a project by issuing a Draft Resolution for comment. The public does not have access to the CASF applications themselves, is not afforded an opportunity to comment on applications, and typically may be completely unaware of a proposed project until the Communications Division has tentatively decided to approve the project. This is far too late for the first public input.

¹² *Id.* at 13.

¹³ *See, e.g.*, Rulemaking 05-06-040/D.06-06-066, *as modified*, D.07-05-032 (Rulemaking to consider confidentiality); California Public Records Act, Cal. Gov. Code § 6250 *et seq.* ("access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state.").

¹⁴ "We start with a presumption that information should be publicly disclosed and that any party seeking confidentiality bears a strong burden of proof." D.06-06-066, 2006 Cal PUC LEXIS 222, at *8.

Ratepayers have a right to weigh in on significant expenditures of ratepayer funds. It is not sufficient simply to post notice that an unidentified applicant seeks funding for an unspecified project in particular Census Block Groups and Zip Codes, as is the Commission's current practice. Instead, applicants should be required to serve their applications on the service list for this proceeding, and Communications Division should use its "TD_AR" email list to forward applications more broadly. Thereafter, those served should be allowed to submit comment on applications before Communications Division issues its Draft Resolutions. At a minimum, once an application is filed, the public should have notice and the ability to comment on the applicant's identity, the type and location of the project, and project cost.

Therefore, DRA proposes deleting the phrase "subject to appropriate and mutually agreed upon confidentiality provisions" from D.07-12-054, and adding the phrase "All applications for CASF funding shall be served on the service list for R.06-06-028 or successor proceeding, and Communications Division shall forward all such applications to its "TD_AR" Resolution email list. Any party may file comments on such applications in accordance with Rule of Practice and Procedure 2.6."

B. Affordability/Adoption: CASF Awards Should Ensure That Customers Will Actually Sign Up For Broadband Service

The CASF program should do more to encourage adoption and affordability of high speed broadband in unserved and underserved communities. ("Adoption" in this context refers to the number or percentage of households that actually subscribe to service, rather than simply having access to wired or wireless infrastructure in the vicinity. "Affordability" refers to how much the broadband service costs in relation to the spending power of the consumers targeted by the service.)

The application process should require applicants to spell out how their proposals will increase broadband adoption and affordability in the areas they will

serve. Currently, applicants are only required to estimate how many customers they believe will sign up for service, but are not required to explain the steps they will take to ensure their estimates are accurate. (Appendix B of the Application form simply requires applicants to state the "Estimated Potential Subscriber Size for Each CBG and ZIP Code, estimated number of potential broadband households and subscribers in proposed project location by CBG, estimated number of potential broadband households and subscribers in proposed project location by ZIP Code, documentation of assumptions and data sources used to compile estimates.") At a minimum, applicants should provide details about their proposed marketing and outreach, so that it is clear at least initially how funding recipients will actually sign up customers.

Ratepayer subsidies will be wasted if broadband facilities receive funding but households and small businesses cannot afford to subscribe to the services those subsidies help create. While we understand that the CASF subsidy is not available to pay for monthly recurring charges, the Commission can condition CASF grants on providers' agreements about the recurring and/or one-time charges they assess on customers. For instance, some CASF grant applicants plan to charge \$134.99 to \$149 for installation/service activation fees.¹⁵ These fees should be disallowed.

Where the Commission grants special funding or otherwise confers special status on an entity that it might not otherwise regulate, it may impose conditions on that entity and such conditions are enforceable before the Commission. *PG&E Corp. v. Public Utilities Comm.*, 118 Cal. App. 4th 1174, 1199 (2004) (Pub. Util. Code § 701 allows the Commission to enforce conditions on entities that are not public utilities: "the PUC's authority [under § 701] to do all things 'necessary and convenient' in the exercise of that power is not expressly limited to actions against public utilities"); *Southern Calif. Edison Co. v. Peevey*, 31 Cal. 4th 781, 792 (2003) (discussing broad reach of § 701). In addition, installation/service connection fees

¹⁵ T-17224 and T-17246.

will deter, rather than stimulate, adoption if prospective customers decide not to connect to the new publicly financed broadband systems because the fees are not affordable.

If the applicant does not propose such limits on its own, DRA recommends that the Commission cap monthly recurring charges for at least two years and prohibit assessment of installation charges or service connection fees. Under the foregoing § 701 authority, the Commission has the right to impose such conditions even if the applicant does not voluntarily propose them.

C. Speed: Consistent with FCC Requirements, CASF Should Benchmark 4/1 Broadband Speeds

The CASF minimum speed should at least match the Federal Communication Commission's (FCC) targeted minimum speed of 4 Mbps download and 1 Mbps upload (4/1).¹⁶ The current CASF program has set a benchmark 3/1 speed, and in some cases has granted funding to projects that do not meet even this lower benchmark.¹⁷ The National Broadband Plan has set a “milestone” that “by 2015, 100 million U.S. homes should have affordable access to actual download speeds of 50 Mbps and actual upload speeds of 20 Mbps.”¹⁸ While California ratepayer-funded projects should provide 21st century speeds, at a minimum the FCC's benchmark speed should apply here to avoid inconsistency in state and federal rules and funding. Indeed, even 4/1 speeds are much slower than those that prevail in

¹⁶ FCC Report 706, summarized at http://www.fcc.gov/Daily_Releases/Daily_Business/2010/db0720/DOC-299989A1.txt: “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 and e-mail.”

¹⁷ See T-17224 (1 Mbps download/256 kbps upload); T-17195 (1.5 mbps/384 kbps); T-17182 (same).

¹⁸ National Broadband Plan, Goal No. 1, available at <http://www.broadband.gov/plan/2-goals-for-a-high-performance-america/?search=goals>.

several European and Asian nations.¹⁹ A possible exception to the 4/1 standard would arise if no provider other than the applicant were offering to serve an area, but the public should be allowed to comment on whether it is better to decline funding for such a proposal than to approve funding for sub-par speeds.

D. Cost Control: The Commission Should Not Fund Projects That Exceed What it Costs in the Marketplace to Deploy Broadband

The Commission should not fund projects with unreasonably high per-household costs. In D.07-12-054, the Commission assumed there would be more than one bidder in a geographic area and that this assumed competition would keep costs low. However, the public record of the program contains only one instance in which there was more than one bidder competing to serve the same geographic area, so the projected competition has not emerged.²⁰

In order to assess the reasonableness of proposed per-household installation costs, the Commission should gather data on what it actually costs to install broadband in rural areas, and set a benchmark against which to compare CASF proposals. DRA will also commit to researching the question and furnishing available data – perhaps in a workshop setting – if this Petition is granted.

The projects the Commission has funded have often been very expensive. For example, in T-17237 (for Siskiyou Telephone Company), the Commission approved a project that cost \$37,000 per household to install.²¹ Because the Commission assumed in advance that competition would control project costs, it never in D.07-12-054 or in subsequent Resolutions. proposed a process for analyzing costs where there were no competing bidders. Thus, when DRA raised the per-household cost as an issue in commenting upon several high-priced projects,

¹⁹ See Organisation for Economic Cooperation and Development (OECD) website summarizing speeds outside the U.S., at <http://www.oecd.org/dataoecd/10/53/39575086.xls>. The OECD is an international organization of 32 countries that came about after World War II.

²⁰ T-17197 (Rapid Link, Inc.).

²¹ T-17237.

the Commission did not address the question at all, choosing instead to refer back to a hoped-for competitive model that had not materialized:

[T]he CASF/ARRA process relies on a competitive bidding process to keep an applicant's costs and proposed installation fees in check, rather than a cost reasonableness review requiring the applicant to justify details of specific project costs and proposed installation fees. Under the established CASF/ARRA process, an applicant risks not receiving a CASF/ARRA award if its costs are too high and other carriers bid at lower costs.²²

Even when DRA pointed out that competitive bidding was not occurring, the Commission continued to act as if it were receiving competing bids, despite the fact that there were no such bids:

In summary, we believe the CASF competitive bidding process renders cost reasonableness review as an unnecessary step in our program and one that will cause unserved and underserved communities in the state a delay in receiving broadband service.²³

A competitive bidding process serves as a control on costs only to the extent that competing applicants actually bid on the same project. Since that is not occurring with the vast majority of CASF grant applications, the Commission has an obligation to the ratepayers, whose money is paying for the grant awards, to seek to control project costs in some other manner, rather than continuing to rely on a failed theoretical cost-containment strategy.

The Commission also implied that posting Census Block Groups and Zip Codes for which CASF funding was being sought on its website would somehow contain costs:

We also take exception to the statement of parties that there is no competition. Under existing rules, CBGs and Zip Codes are posted on the CASF webpage 7 days after an application is received. Any party who wishes to

²² *Id.* at 8.

²³ *Id.* at 9.

submit a competing application may do so by submitting a letter of intent to submit a counter-proposal and / or submit a counter-proposal directly within the prescribed timelines as stated in Resolution T-17143 and D.09-07-020. As Resolution T-17197 and draft Resolution T-17225 demonstrate, competition does exist.²⁴

However, posting CBGs and Zip Codes does not explain what a project will cost. And because the Commission does not review project costs, the Commission has approved projects with total project costs per household that range from approximately \$289 to \$37,000.²⁵ In no Resolution issued to date has the Commission analyzed the costs, compared one application to another, or questioned why one project costs \$300 per household while another costs 100 times as much. Instead, the Commission should require that each application meet the following minimum standard:

The per-household cost must be at or below what it actually costs to deploy broadband without ratepayer subsidies.

To determine actual costs, the Commission should gather information on actual market costs of installing broadband without ratepayer funding and use such information to determine whether requested CASF per-household amounts are reasonable. DRA would support developing such benchmarking data in the context of a workshop, and also is available to research the question and provide information on actual cost for the Commission's consideration. The Commission may also wish to request per-household installation cost information from Incumbent Local Exchange Carriers for each of their broadband products (Verizon's FiOS, AT&T's U-verse, wireless technologies, etc.) and compare that cost data to CASF applicants' cost estimates.

²⁴ T-17233 at 13.

²⁵ See, e.g., T-17221 and T-17237.

Further, the Commission should require CASF applications to include detailed project costs, including per-household costs, and to justify the costs in detail. The Commission should also make this data publicly available and subject to comment once the application is filed. Public review may help provide some check on projects with excessive costs. At bottom, however, the Commission should not fund projects whose costs exceed established benchmarks without reasonable justification.

E. Open Access and Net Neutrality: The Commission Can and Should Require CASF Funding Recipients to Share Their Networks

Some CASF applicants have promised to share their networks with competitive or governmental providers after constructing them. *See, e.g.*, T-17232 (Digital 395 middle mile network). The Commission should make such promises binding by inserting language in the relevant Resolution conditioning funding on such open access. However, the Commission need not limit itself to requiring open access for those who offer it voluntarily.

The Commission has authority, when granting ratepayer dollars, to impose any conditions it deems reasonable. *See* cases cited in Section IV.B above. Even if the provider is not a public utility, those conditions are enforceable both as a matter of contract and as a binding order of the Commission. While it is unlikely that more than one provider will emerge to serve remote rural areas with few potential broadband customers, it both defies logic and is counter to the public interest for the Commission to forego the opportunity to require CASF recipients to share their networks, where technically feasible, and the Commission should add such a condition to each its CASF resolutions.

F. Audits: The Commission Should Put Teeth into its Audit Requirement

Existing law requires the Commission to audit the CASF program. Public Utilities Code § 281(d) provides that:

The commission shall conduct both a financial audit and a performance audit of the implementation and effectiveness of the California Advanced Services Fund to ensure that funds have been expended in accordance with the approved terms of the winning bids and this section. The commission shall report its findings to the Legislature by December 31, 2010. The report shall also include an update to the maps in the final report of the California Broadband Task Force.

The Commission's Resolutions approving CASF funding contain this audit language, as follows:

A. Financial and Performance Audit

Pursuant to AB 1555, the Commission is required to conduct both a financial audit and a performance audit of the implementation and effectiveness of the CASF to ensure that funds have been expended in accordance with the approved terms of the CASF grant. Therefore, as a condition of the grant of funds, all applicants who are non-CPCN and non-WIR holders must agree in writing to allow the Commission to inspect the applicant's accounts, books, papers, and documents related to the application and award of CASF funds.

However, the Commission elsewhere has stated that this audit requirement is not absolute, but rather may be imposed at the Commission's discretion:

In answer to DRA's fourth comment that this resolution should include an audit requirement, all CASF resolutions have an Ordering Paragraph that the Commission has the right to conduct any necessary audit, verification, and discovery during project implementation/construction to ensure that CASF funds are spent in accordance with Commission approval.²⁶

The statutory audit requirement in § 281 makes clear that an audit is not at the Commission's discretion. It would be impossible for the Commission to "ensure

²⁶ T-17245 at 13.

that funds have been expended in accordance with the approved terms of the winning bids and [Section 281]" without auditing each funding recipient.

While CASF recipients are required to submit invoices to the Communications Division before receiving CASF funds, this is not the equivalent of an audit. In addition, it is unclear what Communication Division does with the invoices.

Further, audit data should be publicly available. Because the CASF has operated opaquely, DRA is unaware whether the Commission has audited any CASF recipient. Making audit data public will provide the public some assurance that the Commission is monitoring fund expenditures to ensure that recipients are meeting their commitments. DRA would support having the audits carried out either by Commission auditors, or by outside contractors, as long as the audit process is transparent and the public is allowed to comment on audit reporting.

V. CONCLUSION

In summary, DRA recommends the following modifications to D-07-12-054. DRA includes specific changes to the decision in the Appendix to this Petition for Modification:

- *Transparency.* Applications for CASF funding should be open to the public and subject to a public comment process.
- *Affordability/Adoption.* The program should cap monthly rates at affordable levels for at least two years, prohibit installation or connection charges, and require funding recipients to demonstrate how they will ensure that customers adopt and can afford their broadband offerings.
- *Speed.* The CASF minimum speed should mirror the FCC's 4/1 standard except in rare cases.
- *Cost control.* CASF projects should not exceed benchmark per-household costs based on what it costs in the market to install broadband, and the

Commission should document that benchmark in the record of this proceeding.

- *Open access.* The Commission should require all CASF recipients to share their networks with third party providers.
- *Audits.* The Commission should audit each CASF funding recipient and allow public access to audit data.

Respectfully submitted,

/s/ SARAH R. THOMAS

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September 13, 2010

APPENDIX

A. Transparency

Delete the phrase "subject to appropriate and mutually agreed upon confidentiality provisions" from D.07-12-054.

Add Ordering Paragraph "All applications for CASF funding shall be served on the service list for R.06-06-028 or successor proceeding, and the Communications Division shall forward such applications to its 'TD_AR' email list. Any party may file comments on such applications in accordance with Rule of Practice and Procedure 2.6."

Delete "Where two or more parties express an interest in such a case, a filing timeline could be set such that parties submit simultaneous confidential proposals." (Section 5.A.2).

Delete "subject to appropriate confidentiality provisions" (Finding of Fact 27).

B. Adoption/Affordability

Add Ordering Paragraph: "Any recipient of CASF funding shall agree to cap its monthly recurring charge for a minimum of two years from the date it first offers service generally to the public in its service area."

Add Ordering Paragraph: "No recipient of CASF funding may charge its end user customer any amount to install service."

Add Ordering Paragraph: "All CASF Applicants shall describe with their application how they plan to ensure that they will achieve their targeted levels of adoption and ensure that customers in the regions they serve can afford their broadband offerings. Such description shall include specific strategies for ensuring that the broadband services are affordable and are subscribed to by a significant percentage of target customers."

C. Require Minimum Speeds

Replace the benchmark 3/1 with a minimum speed requirement, as follows: "So as to be consistent with the Federal Communications Commission's National Broadband

Plan, we shall adopt a 4 Mbps/1Mbps (4/1) speed standards as the benchmark for evaluating proposals."

Delete: "We shall adopt the 3 MBPS/1MBPS (3/1) speed standards as the benchmark for evaluating proposals.

Add the following after "While we are sympathetic to arguments that we adopt significantly faster speed benchmarks, we believe that the 3Mbps/1Mbps standard represents a reasonable balance at the onset of this program." "However, since the onset of the program, the FCC has adopted a faster standard – 4/1 – and in the interest of consistency and to prevent confusion, we adopt that standard here, to apply except where the applicant can demonstrate extraordinary conditions that make at least 4/1 speeds impossible."

Change all references to "3/1" to "4/1" in decision.

D. Cost Control

Add 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.

Add 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."

E. Open Access and Net Neutrality

Add Ordering Paragraph: "Any applicant for CASF funding shall share its CASF-funded network with third-party providers."

F. Audits

Add Ordering Paragraph: "Each resolution approving CASF funding shall contain the following provision: 'The Commission will conduct audits – either through one of its own divisions, or using outside contractors – of the funding recipient's expenditures in preparation for its legal obligation to report to the Legislature that ensure that funds have been expended in accordance with the approved terms of the winning bids and Public

Utilities Code § 281. All materials relevant to the audit shall be publicly available, and the public shall be allowed to comment on any audit report before the Commission accepts such report as final."

END OF APPENDIX

CERTIFICATE OF SERVICE

I hereby certify that I have this day *reserved* a copy of **DIVISION OF RATEPAYER ADVOCATES' PETITION FOR MODIFICATION OF DECISION 07-12-054, IMPLEMENTING CALIFORNIA ADVANCED SERVICES FUND (CASF)** on 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 September 14, 2010 at San Francisco, California.

/s/ NANCY SALYER
NANCY SALYER

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