

Date of Issuance 12/24/10

COMMUNICATIONS/RSK/KOK/DLW/RHG

Decision 10-12-045 December 16, 2010

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

Application of Calaveras Telephone Company (U1004C) for an Order authorizing it to issue notes in an amount not exceeding \$1,226,093, and to execute a related agreement and supplemental security instruments.

Application 10-09-014  
(Filed September 22, 2010)

**DECISION AUTHORIZING CALAVERAS TELEPHONE COMPANY  
TO ISSUE DEBT**

**TABLE OF CONTENTS**

I.	Summary .....	2
II.	Background.....	2
	A. Financial Information .....	4
	B. Financing Request.....	5
	C. Current Financing Authority .....	7
	D. Proposed Construction Plans .....	8
	E. Construction Budget.....	10
	F. Cash Requirements Forecast .....	11
	G. Poker Flat Project Funding .....	11
	1. California Advances Services Fund.....	12
	2. RUS ARRA Grant and Low Cost Loan Award .....	16
	3. Internal Funds .....	17
	H. Capital Structure .....	17
III.	Notice and Protests.....	18
IV.	Discussion.....	18
V.	Environmental Impact .....	24
VI.	Competitive Bidding Rule.....	25
VII.	Motion to Shorten Protest Period.....	25
VIII.	Reporting Requirement .....	26
IX.	Fees .....	26
X.	Category and Need for Hearings .....	26
XI.	Assignment of Proceeding .....	27
	Findings of Fact.....	27
	Conclusions of Law .....	30
	ORDER .....	32

## **DECISION AUTHORIZING CALAVERAS TELEPHONE COMPANY TO ISSUE DEBT**

### **I. Summary**

This decision grants Calaveras Telephone Company (CTC) the authority requested in its Application 10-09-014.

CTC requests authority, pursuant to §§ 818 and 851 of the Public Utilities Code, to:<sup>1</sup>

1. Enter into a loan agreement with the United States of America, acting through the Rural Utilities Service (RUS),<sup>2</sup> for the purpose of borrowing \$1,226,093 under the Broadband Initiative Program, as authorized by the American Recovery and Reinvestment Act of 2009 (ARRA);<sup>3</sup>
2. Use the loan proceeds to finance the construction of a broadband infrastructure project in its Copperopolis exchange in Calaveras County, California; and
3. Execute a related agreement and supplemental security instruments in conjunction with the loan.

### **II. Background**

CTC is a California corporation operating as a public utility telephone company under the jurisdiction of the Commission. CTC is the incumbent service provider within rural southwest Calaveras County and offers digital

---

<sup>1</sup> All statutory references are to the Public Utilities Code unless otherwise indicated.

<sup>2</sup> RUS is an agency of the United States Department of Agriculture (USDA), charged with providing assistance to public electric, telephone, water, and sewer utilities in rural areas of the United States via public-private partnerships. RUS works closely with two other agencies that are not part of the USDA, the Federal Financing Bank (FFB) and the Rural Telephone Bank (RTB). These banks provide the funds for many of the loan programs administered by the RUS.

<sup>3</sup> ARRA which is commonly referred to as the Stimulus or The Recovery Act, is an economic stimulus package enacted by the 111<sup>th</sup> United States Congress in February 2009.

subscriber line (DSL) service over its telephone lines. CTC's property is comprised of wire, cable, land, easements, central office equipment, buildings and other pertinent equipment.

CTC currently provides a mixture of Plain Old Telephone Service (POTS), and unregulated Internet access and video services to the customers in its Poker Flat service area located in CTC's Copperopolis exchange.<sup>4</sup> Its current video network is offered to minimal DSL areas and new fiber-to-the-home (FTTH) deployments.

CTC's data services in the Poker Flat service area are currently limited to the existing three mega bits per second (Mbps) or less downstream due to current transport agreements through Pacific Bell Telephone Company, doing business as AT&T California (AT&T) and Sprint Communications Company, LP (Sprint). CTC currently delivers digital voice through a recently upgraded softswitch allowing traditional voice and next generation Voice over Internet Protocol (VoIP) services.<sup>5</sup> The majority of the existing subscribers receive CTC's data services over its copper facilities utilizing DSL technology delivery.

CTC intends to provide POTS, internet access and video services over a fiber to the home (FTTH) platform to the customers located in its Poker Flat service area, which is part of CTC's Copperopolis exchange. According to CTC, the Poker Flat area is a high cost and high demand area in need of additional

---

<sup>4</sup> POTS is the voice-grade telephone service that remains the basic form of residential and small business service connection to the telephone network in most parts of the world. Due to the wide availability of POTS, forms of communications devices such as modems and facsimile machines are designed to use POTS to transmit digital information.

<sup>5</sup> VoIP is a general term for a family of methodologies, communication protocols, and transmission technologies for the delivery of voice communications and multimedia sessions over internet protocol (IP) networks, such as the Internet. Other terms often used interchangeably with VoIP are IP telephony, internet telephony, voice over broadband, broadband telephony, and broadband phone.

services for which CTC's existing offerings are insufficient. Due to the increasing demand for broadband services, CTC claims that it needs to improve its facilities for the benefit of this community and its residents by adding broadband in its Poker Flat area.

### A. Financial Information

In its Income Statement for the fiscal year ending June 30, 2010, as provided by CTC on October 22, 2010, CTC reported that it generated total operating revenues of \$8,871,389 and a net income of \$972,930. CTC's Balance Sheet, as of the same date, shown as part of the information provided by CTC on October 22, 2010, is summarized in the following table.

<b>Table 1</b>	
<b>Balance Sheet as of June 30, 2010</b>	
<u>Assets</u>	<u>Amount</u>
Current Assets	\$ 2,844,501
Marketable Securities	1,901,031
Net Property, Plant, and Equipment	<u>14,376,401</u>
<b>Total Assets</b>	<b><u>\$19,121,933</u></b>
 <u>Liabilities &amp; Stockholder's Equity</u>	
Current Liabilities	\$ 1,660,322
Long Term Debt <sup>6</sup>	7,613,205
Deferred Income Taxes	1,186,220
Common Stock	25,000
Other Capital	10,136
Accumulated Other Comprehensive Loss	(236,686)
Retained Earnings	<u>8,863,736</u>
<b>Total Liabilities &amp; Equity</b>	<b><u>\$19,121,933</u></b>

---

<sup>6</sup> CTC's long-term debt consists of mortgage notes payable to the United States of America, administered by the RUS. The notes are currently secured by all of CTC's property.

**B. Financing Request**

In its Application (A.) 10-09-014 (Application), CTC seeks authorization to enter into a new loan in the amount of \$1,226,093 with RUS under the Broadband Initiative Program (BIP) as authorized by the ARRA. CTC does not believe it prudent or in the best interest of its subscribers to finance some of the costs of its Poker Flat broadband project out of its earnings or resources when it has been awarded a loan with a below market interest rate pursuant to the BIP. CTC will not use the loan funds received for purposes chargeable to operating expenses or to income.

The loan will bear interest at the Treasury rate for comparable loans with comparable maturities. Interest will accrue from the first advance of funds and interest payments will be due and payable on the last day of the month following the month of the advance. The principal payments will begin one year after the date of the first advance. The direct cost-of-money loan will bear interest at the rate applicable to each advance of loan funds based on the average yield on outstanding marketable obligations of the United States having a final maturity comparable to the final maturity of the advance.

As indicated in Table 1, CTC previously obtained long-term secured borrowings from RUS, secured by executed mortgages and supplemental mortgages of substantially all of CTC's property. As of June 30, 2010, the total outstanding balance of CTC's existing RUS loans is \$7,613,205, with mortgages as evidenced by the Amending Telephone Loan Contract, dated January 2, 2003, and the Restated Mortgage, Security Agreement and Financing Statement, dated February 7, 2005.

To secure the payment of the proposed RUS loan, the subject of the Application, CTC requests authority to pledge and grant to the RUS a continuing security interest in and to all of its property.<sup>7</sup>

The new Agreement, as shown in Exhibit D in the Application, provides that CTC will maintain and preserve the lien superior to all other liens affecting the collateral, and will forever warrant and defend the title to the collateral against any and all claims and demands whatsoever.

A RUS letter, dated September 15, 2010, also part of Exhibit D in the Application, stated, among other things, that the executed Agreement and supporting information must be submitted to the RUS within 60 days of the date of the Agreement pursuant to Section 8.1 of the Agreement.<sup>8</sup>

CTC disclosed in the information it provided on October 21, 2010, that it discussed with RUS officials the need for a time extension of the deadline in consideration of the Commission's meeting schedule. By email dated November 8, 2010, RUS notified CTC that it granted CTC a 60-day extension, extending the deadline for CTC to submit the executed Agreement and supporting documents to January 15, 2011.

---

<sup>7</sup> To cover all indebtedness, obligations and liabilities to the RUS, of every kind and description, now existing or hereafter arising.

<sup>8</sup> Section 8.1 states that RUS, in its sole discretion, may terminate the offer to make the Loan or Loan/Grant Combination if it does not receive the Loan-Grant Documents, duly executed on behalf of the Awardee and all conditions in Section 4.1 hereof are not satisfied within sixty (60) days from the date hereof. Section 4.1 of the Agreement provides, among other things, that CTC should provide to the RUS satisfactory evidence that it has duly registered when and where required by law and with all state, Federal and other public authorities and regulatory bodies and obtained all authorizations, certificates, and approvals necessary for, or required as a condition of, the validity and enforceability of each of the loan/grant documents.

### **C. Current Financing Authority**

CTC has obtained various long-term secured borrowings from the RUS, with the most recent ones indicated herein.

In Decision (D.) 03-09-013, dated September 4, 2003, the Commission authorized CTC to secure a \$7,006,750 loan from the RUS to finance: 1) the replacement of an existing switch with a modern switch; 2) the replacement of outdated remote switches with modern remote switches; 3) the refinancing of interim financing; and 4) other plant improvements. This loan transaction was documented under the Amending Telephone Loan Contract, dated January 2, 2003, and includes supplemental mortgages on CTC's properties. As of June 30, 2010, this loan has an outstanding balance of \$5,949,384.

In D.05-06-023, dated June 16, 2005, the Commission authorized CTC to enter into a loan agreement with RUS for \$7,762,000 to be used for the upgrade of its facilities used in conjunction with the provision of broadband services, including the acquisition of facilities, customer premises equipment, and the construction of a redundant fiber route connecting the Copperopolis and Jenny Lind central offices. Of this \$7,762,000 in debt authority, CTC only utilized approximately \$2.9 million. This loan transaction was documented under the Restated Mortgage, Security Agreement and Financing Statement, dated February 7, 2005, and includes supplemental mortgages on CTC's properties. As of June 30, 2010, this loan has an outstanding balance of \$2,410,821.

CTC's total outstanding loan balances with RUS, as of June 30, 2010, net of current maturities of \$747,000, amount to \$7,613,205.<sup>9</sup>

---

<sup>9</sup> \$5,949,384 + \$2,410,821 - \$747,000 = \$7,613,205.

#### **D. Proposed Construction Plans**

CTC developed its current video network two years ago. CTC asserts that it rolled out its video network, unregulated by the Commission, across its system to the areas able to support ten Mbps or more. CTC claims that it upgraded its data network with the start of the planned video two years ago to be prepared for higher bandwidths. CTC states that its current network is able to support the additions proposed in its Application.

According to Exhibit C in its Application, CTC plans to provide broadband, unregulated by the Commission, services to its Poker Flat service area via a Gigabit Passive Optical Network (GPON) FTTH system (Poker Flat Project).<sup>10</sup> GPON is currently deployed in other locations within CTC's incumbent local exchange carrier (ILEC) service area. CTC states that the high cost of deploying FTTH in its Poker Flat service area has been a major deployment hindrance.

CTC's construction will include upgrading existing access cabinets with FTTH functionality. CTC states that the installation of new remote power and fiber management cabinets will support the FTTH development. Customer terminations will include network-powered systems installed at each location to convert the fiber-based access network to the copper-based system within each home. The proposed equipment for the network deployment will utilize Calix C7 platform/system equipment. Delivery will include a new FTTH architecture overlay to the existing POTS and DSL platform.

To augment the broadband delivery, CTC will add a new ten Gigabit transport capacity. All proposed equipment will be located in central offices or a new prefabricated hut and will have redundancy on the common control and

---

<sup>10</sup> A passive optical network (PON) is a form of fiber-optic access network.

uplink cards. According to CTC, due to current limitations, the customer facing ports cannot be equipped in a redundant fashion. Instead, these components are addressed via the shelf sparing.

On October 26, 2010, CTC provided information claiming that its proposed broadband project will provide ancillary benefits to its POTS. CTC states that due to past service outages, the redundancy to be provided as part of the Poker Flat Project will greatly improve service. CTC indicated that not long ago, there was a fire near Valley Springs that severed a major AT&T fiber optic cable, which resulted in a limited outage for AT&T customers but a 100% extended outage and total isolation for CTC's customers. Additionally, a few years before the fire, there was a significant AT&T outage at Lockeford that left the entire foothills region isolated, including both CTC and Volcano Telephone Company.

CTC indicates that its planned transport redundancy will help alleviate this problem since both data and telephone traffic suffering a cable disruption in one direction can be re-directed automatically in the other direction without loss of connection. The redundancy will further enhance the customers' E-911 service in that its customers can call for emergencies during cable cuts and like situations. CTC claims that there are additional benefits to be provided, which include lower cost routing to pass along to ratepayers and providing private line services much faster to the community.

CTC pointed out that there are common costs that both its telephone service and broadband service can share. CTC is fully regulated by the Federal Communications Commission (FCC) which promulgates accounting cost allocation rules under Parts 32 and 64 of the Code of Federal Regulations Title 47, Telecommunications. These rules are administered through the National Exchange Carriers Association (NECA). CTC asserts that there is an extensive annual cost study procedure which allocates each and every asset based on an

interstate/intrastate allocation and actual plant usage, and on numerous other factors. As part of this regulatory regime, DSL is a fully regulated, interstate service provided under approved NECA tariffs.

### E. Construction Budget

CTC's four-year estimated construction budget for its Poker Flat Project, as shown in Exhibit B in the Application and information provided by CTC on October 22, 2010, is shown in the following table:

**Table 2**  
**Poker Plat Project**  
**Construction Budget for Years 2010 through 2013**

<b><u>Budget Category &amp; Project Description</u></b>	<b><u>2010</u></b>	<b><u>2011</u></b>	<b><u>2012</u></b>	<b><u>2013</u></b>	<b><u>Total</u></b>
Network Access Equipment/Install	\$ -	\$ 300,000	\$ 250,000	\$ 29,700	\$ 579,700
Outside Plant/Install Cable & PF Fiber	-	2,800,000	1,800,000	107,378	4,707,378
Cabinets/Install Equipment Node Upgrades	-	95,000	30,000	-	125,000
Customer Premise Equipment/Install	-	80,000	177,450	-	257,450
Oper's Spt. System	-	-	-	-	-
Operating Equipment/Purchase	-	380,000	-	-	380,000
Professional Services/Engineering Serv. Contract	-	244,448	42,000	18,000	304,448
Testing/Outside Plant	-	-	5,000	4,000	9,000
Upfront Costs/Pre-App. Engineering Services	<u>44,000</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>44,000</u>
<b>Total</b>	<b><u>\$44,000</u></b>	<b><u>\$3,899,448</u></b>	<b><u>\$2,304,450</u></b>	<b><u>\$159,078</u></b>	<b><u>\$6,406,976</u></b>

CTC states that its construction budget is subject to change and claims that RUS indicated that it may consider certain budget transfers, if necessary.

**F. Cash Requirements Forecast**

CTC's estimated cash requirements forecast, based on information provided by CTC on October 25, 2010, is summarized in the following table:

**Table 3**  
**Cash Requirements Forecast for Years 2010 through 2013**

<u>Components</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>Total</u>
Poker Flat Project	\$ 44,000	\$3,899,448	\$2,304,450	\$ 159,078	\$ 6,406,976
Other Construction <sup>11</sup>	2,400,000	1,700,000	1,500,000	2,300,000	7,900,000
Payment on Notes	735,000	747,000	782,000	818,000	3,082,000
Bonds, Notes Ret.	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Cash Required	3,179,000	6,346,448	4,586,450	3,277,078	17,389,606
Less: Int. Funds <sup>12</sup>	<u>2,540,000</u>	<u>2,925,000</u>	<u>3,170,000</u>	<u>3,327,000</u>	<u>11,962,000</u>
<b>External Sources</b>	<b><u>\$ 639,000</u></b>	<b><u>\$3,421,448</u></b>	<b><u>\$1,416,450</u></b>	<b><u>\$ 0</u></b>	<b><u>\$ 5,476,898</u></b>

CTC's projected cash requirements indicate that cash available from internal sources which includes cash reserves, internally generated funds or other funds, if needed, will provide approximately \$11,962,000 or 68.8% of its estimated cash requirements of \$17,389,606 for years 2010 to 2013.

**G. Poker Flat Project Funding**

CTC intends to fund the construction of its broadband Poker Flat Project from four different sources:

- a) California Advanced Services Fund (CASF) grant;
- b) RUS grant from the ARRA Recovery Act Funds;
- c) RUS loan from the ARRA Recovery Act Funds; and
- d) Internally generated funds.

---

<sup>11</sup> CTC explains that the funds for other construction are for regulated telephone projects.

<sup>12</sup> Funds from internal sources include cash reserves, internally generated funds or other funds, if required.

## **1. California Advances Services Fund**

Pursuant to § 281 (a), the Commission is required to develop, implement, and administer the CASF to encourage the deployment of high-quality advanced communications services in unserved and underserved areas in California to promote economic growth, job creation, and the substantial social benefits of advanced information and communications technologies.

On July 20, 2009, Governor Schwarzenegger signed Assembly Bill (AB) 1555 (Chapter 24, Statutes of 2009), amending § 281 to expand the CASF eligibility to any entity applying for CASF funding in conjunction with a Recovery Act funding request provided that the entity satisfies the eligibility requirements for CASF funding. AB 1555 also provides that the Commission establish requirements and guidelines for non-certificated applicants. Section 281 (c) (2) states:

Notwithstanding any other law and for the sole purpose of providing matching funds pursuant to the federal American Recovery and Reinvestment Act of 2009 (Public Law 111-5), any entity eligible for funding pursuant to that act shall be eligible to apply to participate in the program administered by the commission pursuant to subdivision (a), if that entity otherwise satisfies the eligibility requirements under that program. Nothing in this section shall impede the ability of an incumbent local exchange carrier, as defined by subsection (h) of Section 251 of Title 47 of the United States Code, that is regulated under a rate of return regulatory structure, to recover, in rate base, California infrastructure investment not provided through federal or state grant funds for facilities that provide broadband service and California intrastate voice service.

On September 25, 2010, the Governor signed Senate Bill (SB) 1040, thus increasing the funding authorized for CASF by \$125 million and extended the sunset date of the CASF program to January 1, 2018.

In D.07-12-054, effective December 20, 2007, the Commission authorized the allocation of \$100 million to support broadband deployment projects in accordance with the principles and processes under the CASF program. The number of traditional wireline telephone lines has declined, while the number of wireless and VoIP lines has increased. Voice service is simply one of many data streams flowing over a broadband connection. The voice telephony market now consists of a rich mix of wireline telephone, wireless telephony, VoIP, and satellite voice offerings. The Commission has authority to monitor and enforce any conditions attached to the approval of the CASF funding.

In Resolution (Res.) T- 17143, the Commission adopted the application requirements, timelines, and scoring criteria for parties to qualify for broadband project funding under the CASF. In Res. T-17143, the Commission indicated that while financial information may demonstrate that an applicant has sufficient funds at the time of application, it does not necessarily ensure that a CASF recipient will have sufficient funds when construction is scheduled to begin, or that funds will continue to be available during construction. The Commission acknowledged that small local exchange carriers (LECs) can utilize their own funds for 60% of a total project's costs, and other applicants are financing 60% through a loan or debt offering.

In Res. T-17143, the Commission provided that an applicant which certifies that 60% of the funding will be provided through its capital budget should not be required to post a performance bond. Such bonds usually serve an important function to ensure the completion of a project.

In Res. T-17143, the Commission stated that if applicants choose to offer voice service (other than basic service) as an additional feature to broadband customers, they must, at a minimum, comply with the FCC's E-911 and battery

backup requirements. In setting this requirement, the Commission did not intend to modify existing minimum basic service requirements for local exchange service. The Commission noted that by providing broadband service to unserved areas, subscribers will have additional telephone service choices through VoIP providers. This will serve the Commission's goal of increasing phone service choices to consumers, consistent with federal and state laws and policies.

On July 29, 2010, the Commission issued Res. T-17282 authorizing CASF to award contingent grant funding of \$640,698 to CTC for its Poker Flat Project to provide broadband service in an isolated shoreline community located six miles south from the main Copperopolis turn off from State Highway 4. There are 409 households located in the project area which covers approximately one square mile on Lake Tulloch.

In Res. T-17282, the Commission approved the CASF grant after the Commission's Communications Division (CD) reviewed CTC's eligibility through an analysis of the required submitted data, which included, but was not limited to: descriptions of current and proposed broadband infrastructure; geographic information system-formatted Shapefiles mapping the subject area; an assertion that the area is underserved; the potential subscriber size and household incomes; the project's construction schedule; the project's budget; a proposed pricing and commitment period for new subscribers; and the financial qualifications of CTC.

In addition, CD reviewed the Shapefiles submitted which mapped the broadband deployment proposed using United States 2000 Census data, the January 2009 Broadband Task Force Report including its on-line maps, and the revised August 10, 2009 California Broadband Task Force maps, among others. CD mapped the test locations to validate the test areas. Lastly, CD determined

that the Census Block Group (CBG) covering the proposed area is qualified as underserved and recommended approval of a CASF grant in the amount of \$640,698 for CTC.

In Res. T-17282, the Commission stated that CTC shall not be required to post a performance bond in conjunction with the CASF grant for CTC’s Poker Flat project.<sup>13</sup> However, CTC’s receipt of the CASF grant is contingent on CTC’s compliance with the requirements in Res. T-17143 and the receipt of Recovery Act funding for this project. If CTC is not successful in its request for the Recovery Act grant or if the Recovery Act grant is less than that requested, the Commission provided that CTC may request additional CASF funds in accordance with Ordering Paragraph No. 7 of D.09-07-020.

In Res. T-17282, the Commission included a summary of the estimated Poker Flat Project costs and funding sources, which is shown in the following table:

**Table 4**

**Poker Flat Project Costs and Funding Sources per Res. T-17282**

<u>Expense Items</u>	<u>Amount</u>
Pre-Construction and Engineering	\$ 678,448
Materials/Supplies and Equipment	5,678,528
Environmental Studies/Permitting	50,000
<b>Total Proposed Budget</b>	<b><u>\$6,406,976</u></b>
<u>Source of Funds</u>	<u>Amount</u>
CASF	\$ 640,698
ARRA Recovery Act Funds	4,086,976
CTC Internal Funds	1,679,302
<b>Total Funds</b>	<b><u>\$6,406,976</u></b>

---

<sup>13</sup> See Ordering Paragraph 2 of Res. T-17282.

## **2. RUS ARRA Grant and Low Cost Loan Award**

By a letter dated September 15, 2010 to CTC, RUS confirmed the award of a grant in the amount of \$2,860,883 and a loan in the amount of \$1,226,093, for a total of \$4,086,976, pursuant to the BIP as authorized by the ARRA. RUS specified that the loan and grant should be used solely to finance CTC's broadband infrastructure project.

RUS assessed the utility's system improvements, its financial needs, and the utility's ability to meet loan obligations. Pursuant to the proposed RUS Agreement, CTC is required, among other things, to do the following:

- a. Provide broadband service described in the RUS approved application commencing from the date the project is substantially complete for at least as long as the composite economic life of the facilities financed by the grant and the loan.
- b. Construct, build, and complete the project in accordance with the system design submitted with the RUS approved application.
- c. Maintain and preserve the lien of the Agreement superior to all other liens affecting the collateral.
- d. Begin construction and/or installation activities only after all necessary local, state and federal requirements have been satisfied.

The Agreement also imposes conditions for completion of the project, some of which are as follows:

- a. CTC shall certify that the project is being constructed in accordance with a detailed schedule describing the project build out;
- b. Loan/grant advances shall be provided on a reimbursement basis, or based on unpaid third party invoices for eligible purposes, or contracts approved by RUS, in accordance with the BIP contracting, work order and advance procedures guide;
- c. CTC shall ensure that adequate funding is in place to complete the project and obtain additional loans of funds for supplemental funding in an amount needed to ensure completion of the project;

- d. CTC shall substantially complete the project within two years;
- e. CTC shall establish an accounting system satisfactory to RUS to account for all advanced funds;
- f. CTC shall afford RUS, the Office of the Inspector General of USDA, and the Government Accountability Office, through their representatives, reasonable opportunity, at all times during business hours and upon prior notice, to have access to and right to inspect the project.

### 3. Internal Funds

As shown in Table 4, CTC intends to derive the remaining \$1,679,302 needed for the project from its cash reserves and internally generated funds.

CTC has other planned construction projects for its regulated telephone service estimated at \$7,900,000 from years 2010 to 2013. CTC intends to use its cash reserves, internally generated funds, or if needed, request additional debt authority from the Commission.

### H. Capital Structure

On October 25, 2010, CTC provided the following capital structure, as recorded as of June 30, 2010, and adjusted to give pro forma effect to its proposed financing transaction:

	<u>Recorded</u>		<u>Adjustments</u>		<u>Proforma 2013</u>	
Long-term debt	\$ 7,613,205	46.78%	(2,128,907) <sup>(A)</sup>	\$5,484,298	33.84%	
Preferred Stock	0	0.00%	0	0	0.00%	
Common Equity	<u>8,662,186</u>	<u>53.22%</u>	<u>2,062,000<sup>(B)</sup></u>	<u>10,724,186</u>	<u>66.16%</u>	
<b>Total Capitalization</b>	<b><u>\$16,275,391</u></b>	<b>100.00%</b>	<b><u>\$(- 66,907)</u></b>	<b><u>\$16,208,484</u></b>	<b>100.00%</b>	

#### Notes:

(A) Long-term Debt

Issuance of \$1,226,093 requested in this Application and principal payment of current and new debt from 2010 to 2013, estimated at \$3,355,000.

(B) Common Equity

Projected net income of \$2,062,000 from 2010 to 2013.

### **III. Notice and Protests**

Notice of the filing appeared on the Commission's Daily Calendar of September 24, 2010. Rule 1.9 of the Rules of Practice and Procedure requires that a copy of the document be served on each person whose name is on the official service list for the proceeding. CTC served its Application on September 22, 2010, to the service list attached to the Application. CTC claims that there have been no customers or other interested parties that have expressed interest in receiving copies of any application that CTC files with the Commission.

Rule 3.2 of the Rules of Practice and Procedure requires applicants for authority to increase rates to notify certain State, County and City agencies of the fact and publish in a newspaper of general circulation the proposed rate increases. This financing Application does not increase any rates or charges nor does it cut any services. CTC has met the Commission's notice and service requirements.

No protests were received and no person filed to become a party to this proceeding.

### **IV. Discussion**

Section 281(c)(2) puts the Commission in the unique situation of approving the distribution of CASF monies as matching funds to eligible entities in conjunction with ARRA funds. The CASF enabling legislation requires the Commission to develop, implement and administer the CASF to encourage deployment of high-quality advanced communications services to all Californians that will promote economic growth, job creation, and the substantial social benefits of advanced information and communications technologies.

CTC's proposed Poker Flat project will deploy broadband bandwidth and deliver its services over FTTH to its broadband underserved Poker Flat area. The proposed project will increase its existing transport capacity and CTC asserts that

the project will reduce the operational costs of its POTS and DSL services. In addition, the broadband plant will contribute to the stability of its POTS and E-911 services. The additional transport capacity in the region will potentially assist other providers in its area which are currently limited by the same capacity issues.

In Res. T-17282, the Commission specifically approved contingent funding for CTC's Poker Flat project. In like manner, RUS awarded CTC with an opportunity to receive a grant and a loan for the Poker Flat project. The Commission and RUS having explicitly determined the use of proceeds acceptable, it is our responsibility in this unique instance to provide the regulated utility the means to receive this Commission's approval of the Application for an unregulated use of the loan proceeds.<sup>14</sup> Most importantly, the Commission retains some discretion and jurisdiction over conditions attached to the CASF funding to ensure continued public benefits. The proposed Poker Flat project is for the public good and our approval will enable CTC to avail of the low-cost RUS loan and receive the RUS and CASF grants in order to deploy high-quality advanced communications services to its Poker flat service area.

Section 817 provides that a public utility may issue stocks and bonds, notes, and other evidences of indebtedness payable at periods of more than 12 months after the date thereof, for certain purposes, and no others. To the extent that the project provides ancillary benefit to POTS by creating system redundancy which may reduce outages and enhance E-911 service in the Poker flat area, the project is a proper use of funds under § 817(b) and § 817(c).

---

<sup>14</sup> Res. T-17143 acknowledged that broadband is regulated by the federal authorities and is not a regulated service under the authority of this Commission. However, the Commission does and should retain some discretion to ensure continued public benefits since the Commission will approve up to 40% of broadband infrastructure costs.

However, we will not make a finding in this Decision on the reasonableness of CTC's proposed construction program or ancillary benefits to its POTS, if any. Construction expenditures and the resulting plant balances and any ancillary benefits from this project to its POTS are issues that are normally addressed in general rate cases.

CTC's projected cash requirements indicate that internally generated funds will provide approximately 68.8% of its cash requirements for 2010 through 2013, leaving \$5,476,898 to be funded from external sources. CTC's requested financing authority appears necessary to assist CTC in meeting its projected external funds requirements. However, we will not address the cost of money resulting from CTC's financing activities. Such reasonableness is subject to review in subsequent ratemaking proceedings and may result in a disallowance, if determined imprudent.

As shown in Table 5, the construction of the planned improvements and the issuance of the proposed debt will significantly increase CTC's assets and capitalization. The estimated change in its recorded capital structure after CTC's issuance of the proposed debt is material. However, recorded capital structures may or may not be used for the ratemaking capital structure and ratemaking capital structures are normally subject to review in a general rate case or other proceeding. We will not make a finding in this Decision on the reasonableness of the projected capital structure for ratemaking purposes.

Section 818 states that no public utility may issue notes or other evidences of indebtedness payable at periods of more than 12 months unless, in addition to the other requirements of law, it shall first have secured from the Commission an order authorizing the issue, stating the amount thereof and the purposes to which the issue or the proceeds thereof are to be applied. Section 818 requires the Commission, in issuing such as an order, to find that the money, property, or

labor to be procured or paid for with the proceeds of the debt authorized is reasonably required for the purposes specified in the order and, unless expressly permitted in an order authorizing debt, that those purposes are not, in whole or in part, reasonably chargeable to expenses or to income.

As set forth above, CTC's proposed loan would be for the purpose of constructing and improving its facilities and improving and maintaining its service, which falls within the scope of purposes in § 817. Moreover, CTC's proposed borrowing and the money, property, or labor to be procured or paid for with the proceeds of the debt authorized by this Decision is reasonably required for the purposes specified in Table 2 of this Decision, since these improvements will benefit customers in the Poker Flat service area over many years. CTC's proposed Poker Flat Project is not reasonably chargeable to expenses or income.

Section 851 requires Commission authorization before a utility may "lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its... plant, system or other property necessary or useful in the performance of its duties to the public..." Section 851 permits the encumbrance of utility assets when such encumbrance serves to secure the authorized debt.

RUS requires an encumbrance on CTC's assets to secure the loan and the grant and the Commission frequently authorizes such encumbrances where, as here, it is not adverse to the public interest. As of June 30, 2010, CTC's outstanding loan balances with the RUS total \$7,613,205. Since the lien on CTC's collateral continues as the former loans remain outstanding, RUS requires CTC to grant it a continuing security interest in and to all of CTC's property, and to execute a related agreement and supplemental security instruments in conjunction with the proposed loan and the grant.

According to the terms of the Agreement, RUS has and will continue to maintain a security interest in all of the assets of CTC and until all indebtedness is completely paid in full, RUS will maintain the security interest. According to RUS, it does not grant a partial release of liens when previous loans are fully paid and CTC continues to make payments on other RUS loans. In addition, the security interest covers CTC's property funded by RUS loans as well as any grant-funded assets. Federal regulation requires that the government has security/ownership rights in anything funded with federal grant funds.

However, RUS states that if CTC elects to go to another lender for future financing requirements, RUS is willing to share a first lien position on a *pari passu* basis with another lender.<sup>15</sup> In fact, RUS is currently accommodating such an arrangement in the ARRA BIP program where awardees have existing outside indebtedness.

CTC's proposed borrowing and the money, property, or labor to be procured or paid for with the proceeds of the debt authorized by this Decision is reasonably required for the purposes specified in this Decision, which purposes are not, in whole or in part, reasonably chargeable to expenses or to income. In addition, it is necessary to authorize CTC to encumber its assets so that RUS will provide the grant and the loan.

Section 281 requires that the Commission develop, implement, and administer the CASF to encourage deployment of broadband service. According to the Agreement, CTC is required to secure the loan and the grant and its other obligations to the RUS. Without an authorization for the grant of this security interest to RUS, both the loan and the grant offer may be terminated.

---

<sup>15</sup> Per information provided by RUS in its email dated November 9, 2010.

Therefore, we will authorize CTC to obtain the RUS loan in the amount of \$1,226,093 and to encumber its assets in connection with the debt. Our approval will complement the Commission's requirement that the approval of the CASF grant is contingent on the receipt of the ARRA funding and provide CTC with the loan authorization required by RUS.

The key factors that we considered in our disposition of CTC's request for debt authority in this proceeding follow:

1. The emergence of advanced information and communications technologies.
2. CTC's intention to provide broadband services in unserved and underserved areas in California.
3. The Commission's jurisdiction with respect to monitoring and enforcement of any conditions attached to approval of the CASF funding as stated in D.07-12-054.
4. While broadband is regulated by the federal authorities, the Commission retains some discretion to ensure continued public benefits since part of the infrastructure cost is being paid with CASF monies.
5. Section 281 requires that the Commission develop, implement, and administer the CASF to encourage deployment of high-quality advanced communications services.
6. The condition imposed by RUS that CTC obtain authorizations, certificates, and approvals from all state, Federal and other public authorities and regulatory bodies for the grant and the loan to be valid and enforceable.
7. The Commission's condition indicated in Res. T-17282, that the approval of the CASF grant to CTC is contingent on CTC's compliance, among other things, with the receipt of the ARRA funding for the Poker Flat project.
8. The various RUS conditions being imposed on CTC in conjunction with the completion of the project.
9. RUS' requirement stated in the BIP Loan/Grant and Security Agreement that CTC will grant RUS a continuing security interest in and to all of CTC's property to secure the loan and the grant combination.

Consistent with § 824, CTC should maintain records to (i) identify the specific long-term debt issued pursuant to this Decision, and (ii) demonstrate that the proceeds from such debt was only used for the purposes specified herein.

CTC should keep and maintain copies of the Agreement and related loan documents and within fifteen days from request provide copies to the Utility Audit, Finance and Compliance Branch (UAFCB).

## **V. Environmental Impact**

The California Environmental Quality Act (CEQA) applies to projects that require discretionary approval from a governmental agency, unless exempted by statute or regulation. It is long established that the act of ratemaking by the Commission is exempt from CEQA review. As stated in the California Public Resources Code, the “establishment, modification, structuring, restructuring or approval of rates, tolls, fares, or other charges by public agencies” is exempt from CEQA.<sup>16</sup> Likewise, the creation of government funding mechanisms or other government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant impact on the environment are not “projects” subject to CEQA.<sup>17</sup>

This Decision does not authorize any capital expenditures or construction projects. New construction projects which CTC intends to finance via this Application should undergo CEQA review as early as feasible in the planning process, as required by CEQA Guidelines Section 15004(b). To the extent capital expenditures are financed with the proceeds of the long-term debt issued

---

<sup>16</sup> Public Resources Code Section 21090(b)(8).

<sup>17</sup> CEQA Guidelines Section 15378(b)(4).

pursuant to this Decision, ongoing projects have already been subject to any necessary CEQA review undertaken prior to CTC receiving a certificate of public convenience and necessity or permit to construct. CEQA review for future projects will occur through the regulatory processes applicable to each capital project when meaningful information necessary for conducting an environmental assessment is available.

CTC states in the Application that it will comply with all environmental permitting requirements applicable to the project that it will undertake in conjunction with the proposed loan. However, Res. T-17282, which approved the CASF grant for the Poker Flat project stated that “since the proposed project will be constructed on existing infrastructure, CTC’s proposed project is exempt from CEQA review.”

## **VI. Competitive Bidding Rule**

Under the provisions of Res. F-616, CTC’s proposed issuance of debt is exempt from the Commission’s Competitive Bidding Rule because the principal amount does not exceed \$20,000,000.

## **VII. Motion to Shorten Protest Period**

On September 23, 2010, CTC filed a Motion for expedited treatment of A.10-09-014, stating that RUS requires that the executed loan/grant documents and supporting information, that includes this Commission’s financing approval, be submitted by CTC to the RUS within 60 days from September 15, 2010.

Because of the Commission’s set meeting schedule, the Commission could not accommodate CTC’s request. By the time this proceeding is addressed by the Commission, the 30-day protest period would have ended. Therefore, CTC’s motion for expedited treatment of this Application becomes moot.

On October 15, 2010, staff notified CTC that it would need to correspond with RUS to request for an extension of the 60-day RUS deadline. On November 8, 2010, RUS extended the deadline to January 15, 2011.

### **VIII. Reporting Requirement**

General Order (GO) 24-B requires utilities to submit a monthly report to the Commission that contains, among other things: (i) the amount of debt and equity securities issued by the utility during the prior month; (ii) the total amount of debt and equity securities outstanding at the end of the prior month; (iii) the purposes for which the utility expended the proceeds realized from the issuance of debt and equity securities during the prior month; and (iv) a monthly statement of the separate bank account that the utility is required to maintain for all receipts and disbursements of money obtained from the issuance of debt and equity securities.

On or before the 25<sup>th</sup> day of each month, CTC should file with the UAFCB the reports required by GO 24-B.

### **IX. Fees**

Whenever the Commission authorizes a utility to issue debt, the Commission is required to charge and collect a fee in accordance with § 1904(b). The fee for this financing authority as required by § 1904(b) is \$2,226.<sup>18</sup>

### **X. Category and Need for Hearings**

In Res. ALJ 176-3262, dated October 14, 2010, the Commission preliminarily categorized this Application as ratesetting, and preliminarily determined that hearings were not necessary. Accordingly, a public hearing is

---

<sup>18</sup> The fee is assessed on \$1,226,093 of authorized borrowing as follows: \$2 times (\$1,000,000/\$1,000) plus \$1 times (\$226,093/\$1,000) equals \$2,226.

not necessary, and there is no need to alter the preliminary determinations made in Res. ALJ 176-3262.

## **XI. Assignment of Proceeding**

Rami S. Kahlon is the Examiner in this proceeding.

### **Findings of Fact**

1. CTC, a California corporation, is a public utility telephone company subject to the jurisdiction of this Commission.
2. CTC is the incumbent service provider within rural southwest Calaveras County and offers DSL service over its telephone lines.
3. CTC currently provides a mixture of basic telephone service or POTS and unregulated internet access and video services to customers located in the Poker Flat service area over its copper facilities.
4. CTC is experiencing an increasing demand for broadband services and intends to provide a mixture of POTS, internet access and video services in its Poker Flat service area over a FTTH platform.
5. The Poker Flat area is a high cost and high demand area in need of additional services for which CTC's existing facilities are not sufficient.
6. CTC needs funding for its Poker Flat project.
7. CTC's proposed broadband project may provide ancillary benefits to its telephone service.
8. There are common costs that both of CTC's telephone and broadband services may share.
9. On July 20, 2009, Governor Schwarzenegger signed AB 1555, amending § 281 until January 1, 2013, to expand the CASF eligibility to any entity applying for CASF funding in conjunction with an ARRA funding request.

10. On September 25, 2010, the Governor approved SB 1040 that increased by \$125 million the funding authorized for CASF and extended the sunset date of the CASF program from January 1, 2013 to January 1, 2018.

11. The Commission has authority to monitor and enforce any conditions attached to approval of the CASF funding.

12. Section 281 encourages the deployment of high-quality advanced communications services to all Californians that will promote economic growth, job creation, and the substantial social benefits of advanced information and communications technologies.

13. In Res. T-17282, the Commission awarded CTC contingent CASF funding of \$640,698 for its Poker Flat Project. This amount represents 10% of the project costs for CTC to provide broadband service.

14. On September 15, 2010, RUS confirmed CTC's eligibility for a grant in the amount of \$2,860,883 and a loan in the amount of \$1,226,093 to fund the construction of its broadband infrastructure project.

15. Both the RUS grant and the loan were awarded to CTC pursuant to the BIP, as authorized by the ARRA.

16. CTC currently has long-term secured borrowings through RUS for utility plant.

17. CTC's existing RUS loans with a total outstanding balance of \$7,613,205, as of June 30, 2010, are secured by the utility's assets, as evidenced by the Amending Telephone Loan Contract dated January 2, 2003, and the Restated Mortgage, Security Agreement and Financing Statement dated February 7, 2005.

18. Section 818 and RUS require this Commission's approval of the RUS loan.

19. The inability to secure approval of the RUS loan could jeopardize the receipt by CTC of the RUS and CASF grants.

20. The construction costs to be funded partly with CTC's proposed RUS loan are shown in Table 2 of this Decision.

21. The RUS borrowing is for proper purposes.

22. RUS requires a security interest in the utility's assets.

23. CTC has planned construction projects for its regulated telephone service from years 2010 to 2013.

24. If CTC will need to obtain additional debt in the future, RUS is amenable to share a first lien position on a *pari passu* basis with other lenders.

25. RUS imposes conditions to ensure completion of the Poker Flat Project.

26. In Resolution ALJ 176-3262, dated October 14, 2010, the Commission preliminarily categorized this Application as ratesetting, and preliminarily determined that hearings were not necessary.

27. CTC's Motion for expedited treatment of the Application is moot.

28. By email dated November 8, 2010, RUS notified CTC, that it granted CTC a 60-day extension, extending the deadline for CTC to submit the executed Agreement and supporting documents to January 15, 2010.

29. CTC must comply with all environmental permitting requirements applicable to the construction and improvements that it will undertake in conjunction with this proceeding.

30. Res. F-616 specifically exempts debt issues of \$20 million or less from the Commission's Competitive Bidding Rule.

31. GO 24-B requires utilities to submit a monthly report to the Commission that contains, among other things: (i) the amount of debt and preferred stock issued by the utility during the prior month; (ii) the total amount of debt and equity securities outstanding at the end of the prior month; (iii) the purposes for which the utility expended the proceeds realized from the issuance of debt and equity securities during the prior month; and (iv) a monthly statement of the

separate bank account that the utility is required to maintain for all receipts and disbursements of money obtained from the issuance of debt and equity securities.

32. The Commission has routinely required utilities to maintain records to (i) identify the specific long-term debt issued; and (ii) demonstrate that the proceeds from such debt have been used only for authorized purposes.

33. The Commission has routinely required utilities to keep and maintain copies of the debt agreements and within fifteen days from a request provide copies to the Commission's Utility Audit, Finance & Compliance Branch.

34. On September 22, 2010, CTC served its Application on its service list.

35. Notice of the filing of the Application appeared on the Commission's Daily Calendar on September 24, 2010. No protests have been received.

36. The fee for this financing authority as required by § 1904(b) is \$2,226.

### **Conclusions of Law**

1. Broadband is regulated by the FCC but the Commission retains some discretion to ensure continued public benefits since part of the infrastructure costs is being funded with CASF monies.

2. CTC's proposed Poker Flat Project costs are for facilities for services not regulated by this Commission which may provide ancillary benefits to its POTS and are not reasonably chargeable to expenses or income.

3. CTC's proposed RUS loan to help fund the Poker Flat Project is for proper purposes.

4. It is not adverse to authorize CTC to enter into the Agreement with the RUS for the \$1,226,093 loan to help finance the construction discussed herein.

5. It is not adverse to the public interest to allow CTC to provide a continuing security interest in and to all of CTC's property and execute related agreement

and supplemental security instruments in conjunction with the loan and the grant.

6. The loan authorization herein is not a finding of the reasonableness of CTC's proposed construction plan or expenditures, the cost allocation between regulated and non-regulated services, the resulting plant balances in rate base, the resulting capital structure, or the cost of money, nor does it indicate approval of matters subject to review in general rate case of other proceedings.

7. CTC should be authorized to execute the Agreement and encumber its property to secure the debt authorized herein so long as the debt is to be used solely for CTC's Poker Flat Project.

8. CTC's proposed loan is exempt from the Commission's Competitive Bidding Rule.

9. It is CTC's responsibility to abide by and comply with any applicable environmental regulations for any capital improvement undertaken using the debt authorized herein.

10. Consistent with § 824, CTC should maintain records to (i) identify the specific long-term debt issued pursuant to this order, and (ii) demonstrate that the proceeds from such debt have been used only for the purposes authorized herein.

11. CTC should provide the Commission with the monthly reports required by GO 24-B.

12. A public hearing is not necessary.

**O R D E R**

**IT IS ORDERED** that:

1. On or after the effective date of this decision, Calaveras Telephone Company is authorized to:
  - a) Enter into a loan agreement with the United States of America, acting through the Rural Utilities Service (RUS) for the purpose of borrowing \$1,226,093 under the Broadband Initiative Program, as authorized by the American Recovery and Reinvestment Act of 2009, to fund the construction of a broadband infrastructure project in its Copperopolis exchange in Calaveras County;
  - b) Execute and deliver the Loan/Grant and Security Agreement and all related documents required for the completion of the loan; and
  - c) Encumber its assets in connection with the loan.
2. Calaveras Telephone Company shall not use the proceeds authorized by this decision to begin construction of capital projects until Calaveras Telephone Company has obtained any required environmental review under the California Environmental Quality Act.
3. Calaveras Telephone Company shall notify the Commission's Utility Audit, Finance and Compliance Branch in writing when its Poker Flat project has been completed.
4. Calaveras Telephone Company's loan authorized herein is exempt from the Commission's Competitive Bidding Rule.
5. Calaveras Telephone Company shall maintain records to (i) identify the specific long-term debt issued pursuant to this decision, and (ii) demonstrate that the proceeds from such debt have been used only for the purposes authorized by this decision.
6. Calaveras Telephone Company shall keep and maintain copies of the Loan/Grant and Security Agreement and all related documents and within

fifteen days from a request provide copies to the Commission's Utility Audit, Finance and Compliance Branch.

7. On or before the 25<sup>th</sup> day of each month, Calaveras Telephone Company shall file with the Commission's Utility Audit, Finance & Compliance Branch the reports required by General Order No. 24-B. When the full amount of the loan has been received and reported, and the system improvements completed and all the capital expenditures reported, the General Order No. 24-B reporting shall terminate and will no longer be required.

8. The authority granted by this decision shall become effective when Calaveras Telephone Company pays \$2,226 as required by Public Utilities Code § 1904(b).

9. Application 10-09-014 is closed.

This order is effective today.

Dated December 16, 2010, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
DIAN M. GRUENEICH  
JOHN A. BOHN  
TIMOTHY ALAN SIMON  
NANCY E. RYAN  
Commissioners