

State of California

Public Utilities Commission

San Francisco

MEMORANDUM

Date : **March 12, 2013**

To : **The Commission
(Meeting of March 21, 2013)**

From : **Kimberly Lippi
Public Utilities Counsel IV**

**Roxanne L. Scott
Program and Project Supervisor, Communications Division**

Subject: **Filing of Comments in Response to FCC's Request for Further Comments on Issues Regarding Service Obligations for Connect America Phase II and Determining Who is an Unsubsidized Competitor.**

RECOMMENDATION: The California Public Utilities Commission (CPUC) should file comments in response to the Federal Communications Commission's (FCC) Request for Further Comments regarding the methodology used to determine which providers can be considered unsubsidized competitors for purposes of the Connect America Fund (CAF). Areas served by unsubsidized competitors are not eligible for high cost support. The CPUC should make the following recommendations: 1) Support the FCC's proposal to use a speed benchmark of 6 Mbps for download and 1.5 Mbps for upload to determine which areas can be considered served, as the CPUC does in its California Advanced Services Fund (CASF) Program; 2) Agree with the FCC's proposal to consider any area with a cable provider using DOCSIS 3.0 as served; and 3) Recommend that mobile broadband providers be considered unsubsidized competition if they meet certain conditions. Comments are due March 28, 2013.

BACKGROUND: On February 26, 2013, the FCC's Wireline Competition Bureau (Bureau) sought further comment¹ on several issues regarding service obligations and how providers will demonstrate their status as an unsubsidized competitor for the Connect America Fund Phase II. In the Universal Service Fund/Intercarrier Compensation (*USF/ICC*) *Transformation Order* adopted in November 2011, the FCC made fundamental changes to the high cost support mechanism. Prior to that Order, the federal high cost support mechanism provided support to carriers operating in high cost areas to help defray the cost of the local loop and keep the cost of

¹ Wireline Competition Bureau Seeks Further Comment on Issues Regarding Service Obligations for Connect America Phase II and Determining Who is an Unsubsidized Competitor, Dkt No 10-90, (DA No. 13-284); rel. Feb. 26, 2013.

voice service affordable. Under the *USF/ICC Transformation Order*, the FCC is transitioning high cost support to the CAF. In order to receive high cost support under this new mechanism, carriers must deploy lines that are both voice and broadband capable.

The FCC also ordered that a carrier could not receive CAF support in areas where there is an “unsubsidized competitor”, which the FCC defines as a facilities-based provider of residential terrestrial fixed voice and broadband service that meets the FCC’s broadband performance requirements for speed, latency and capacity.

As part of the reform, the FCC adopted a framework for providing ongoing support to areas served by price cap carriers, including areas lacking broadband-capable infrastructure, known as Phase II of the Connect America Fund. The FCC delegated to the Bureau the task of developing a forward-looking cost model to determine, among other things, which areas are eligible for support in CAF Phase II. Following the adoption of the cost model, each incumbent price cap carrier² will be given the opportunity to accept, for each state it serves, a model-derived support amount in exchange for offering voice and broadband service meeting specified standards, for a period of five years.

The FCC ordered that price cap carriers receiving CAF Phase II support by the end of the third year must offer at least 4 Mbps/1 Mbps broadband service to at least 85 percent of their high-cost locations covered by the state level commitment. By the end of the fifth year, those carriers must offer at least 4 Mbps/1 Mbps broadband service to all supported locations, and at least 6 Mbps/1.5 Mbps to a number of supported locations (to be specified). The companies that accept a state-level commitment also must offer service with latency suitable for real-time applications, such as Voice over Internet Protocol (VoIP), and with usage capacity reasonably comparable to that available for comparable offerings in urban areas. Voice and broadband in rural areas must be offered at rates reasonably comparable to the rates for those services in urban areas.

In this Public Notice, the Bureau seeks to further develop the record on a number of issues relating to implementation of CAF Phase II support. Specifically, the Bureau seeks comment on how it will determine which census blocks are served by an unsubsidized competitor, how price cap carriers will demonstrate they are meeting the Commission’s requirements for reasonable comparability, and what other providers will need to demonstrate to be deemed unsubsidized competitors.

In the *USF/ICC Transformation Order*, the FCC specified that the actual download speed for voice and broadband should be at least 4 Mbps, but then accepted proxy speeds according to the technology available. The Bureau now seeks to understand what speed threshold in the June 2012 State Broadband Initiative should be used as a proxy for 4 Mbps downlink/1 Mbps uplink speeds when the Bureau identifies those census blocks that are served by an unsubsidized competitor.

² Federal Price Cap ILECs in California are AT&T, Verizon, and Frontier.

In this request for further comments, the Bureau also proposes to exclude from CAF support any census block that is served by a cable broadband provider meeting the defined speed threshold used with DOCSIS 3.0 or greater.³

Mobile wireless providers were originally excluded in the *USF/ICC Transformation Order* from serving as unsubsidized competitors in CAF, and the Bureau seeks comment on whether mobile providers should be allowed to participate in the challenge process. For fixed wireless systems, the Bureau does not propose a presumption of coverage due to the wide variance in service offerings from fixed wireless providers. The Bureau instead proposes that a fixed wireless provider could demonstrate that it is an unsubsidized competitor by making an affirmative showing that it meets the necessary speed, latency, capacity, and price criteria.

The FCC states that to the extent any interested parties wish to bring to its attention any information they believe should supplement the reported June 2012 State Broadband Initiative (SBI) data, they are invited to submit comments by the deadline specified for this Public Notice. The FCC particularly encourages input from state SBI grantees and other state authorities that may have relevant information. The CPUC is the state SBI grantee for California.

DISCUSSION AND RECOMMENDATIONS: Staff recommends the CPUC file comments on the following issues raised in the Public Notice on the determination of “unserved areas”: (1) what speed threshold utilized as a proxy for 4 Mbps/1 Mbps when the Bureau identifies those census blocks that are served by an unsubsidized competitor meeting the specified speed requirement in the model; (2) whether any census block that is served by a cable broadband provider that provides service meeting the defined speed threshold should be excluded from support calculations; and (3) whether a fixed wireless provider could demonstrate it is an unsubsidized competitor by making an affirmative showing that it meets the necessary speed, latency, capacity, and price criteria.

1. Speed Threshold

The CPUC should recommend that for purposes of CAF Phase II, the model should treat an area as unserved if it is shown on the National Broadband Map as lacking broadband with speeds of at least 6 Mbps/1.5 Mbps, instead of using 3 Mbps/768 kbps as a proxy. This speed threshold is consistent with the speed threshold used for the CASF program. The CASF has been using the 6/1.5 benchmark because it is the highest advertised speed from mobile wireless providers provided in the data submitted to the CPUC, and it is also one of the speed gradients on the National Broadband Map.

2. Census Block Served by Cable Broadband Provider

The CPUC should support the FCC’s proposal to consider any area with DOCSIS 3.0 or higher to be ‘served’ and not subject to CAF subsidies, with that rebuttable presumption subject to challenge in a challenge process. DOCSIS 3.0 has the capability to provide the necessary characteristics for quality of service with the properly provisioned infrastructure (e.g. backhaul).

³ DOCSIS is a cable broadband standard that permits the addition of data over an existing cable system.

Staff proposes to answer the FCC's questions based on data gathered through the NTIA's Mapping Grant Program or through the CPUC's CASF program. The CPUC data, and its analysis, provides a solid basis for providing fact-based answers to the above questions.

3. Fixed Wireless Providers

Based on the Communications Division's drive test results, the CPUC should recommend that fixed wireless and mobile providers be required to prove that their services should be capable of supporting voice and streaming video if they are to be considered unsubsidized competitors. Latency is one aspect of the quality of service measurements for these applications that the Communications Division has taken in its drive testing. CD has developed a way to calculate when these services meet these capabilities and the CPUC should recommend that this process be used to determine if mobile or fixed wireless service is robust enough such that no high cost subsidies are required in their areas. The CPUC should recommend that both fixed and mobile wireless providers be required either to submit independent 3rd party testing of areas or use their own tests, but only if done in a completely transparent manner.

Assigned Staff: Legal Division – Kimberly Lippi (KJL, 703-5822); Communications Division Michael Morris (MMO, 703-2112); Karen Eckersley (KE1, 703-2778)