

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

**Communications Division  
Broadband, Video and Market Branch**

**RESOLUTION T-17733  
April 15, 2021**

**R E S O L U T I O N**

**Resolution T-17733** Authorizing Disclosure of Project Household  
Broadband Subscription Data for California Advanced Services Fund  
Annual Report

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**SUMMARY**

This Resolution authorizes the public disclosure of California Advanced Services Fund (CASF) project household broadband subscription data to be included in the CASF Annual Report, which the California Public Utilities Commission (Commission) is required to provide to the Legislature pursuant to California Public Utilities (Pub. Util.) Code section 914.7(a).

**BACKGROUND**

The CASF program provides grants, funded by surcharges collected from California's telecommunications ratepayers, to eligible applicants, to increase broadband deployment and adoption and to provide Internet access in underserved areas in order to bridge the "digital divide."<sup>1</sup> The Commission launched the CASF program in 2008 in Decision (D.) 07-12-054 and the Legislature later codified the program pursuant to Senate Bill (SB) 1193.<sup>2</sup>

Pub. Util. Code section 914.7(a) mandates that the Commission submit to the Legislature an annual report on CASF program activities by April 1 of each year.<sup>3</sup> The statute requires, among other items, reporting of "[t]he number of formerly unserved households subscribing to broadband service in areas covered by projects funded by the

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<sup>1</sup> See Pub. Util. Code §§ 281(a), (d).

<sup>2</sup> Please see the CASF website for more details regarding the program: <https://www.cpuc.ca.gov/casf/>.

<sup>3</sup> The prior Annual Reports are available at: <http://www.cpuc.ca.gov/General.aspx?id=9226>.

[CASF].<sup>4</sup> On January 4, 2021, the Communications Division (CD) sent data requests to all CASF infrastructure grantees to collect broadband subscription data and project statuses. Responses were due on January 15, 2021.

In their data responses, both Pacific Bell Telephone Company (dba AT&T California) and Charter Communications, Inc. (Charter) designated their CASF project household subscribership data as confidential pursuant to Commission General Order (G.O.) 66-D.

## **DISCUSSION**

This Resolution authorizes the disclosure of the actual number of household subscribers to each CASF project and finds that this information may be included in the CASF Annual Reports.

### **AT&T California and Charter's Confidentiality Claims**

General Order 66-D took effect on January 1, 2018 and describes the manner in which information must be submitted to the Commission in order to be treated as confidential. As stated above, AT&T California and Charter have designated their CASF project household subscribership data as confidential pursuant to G.O. 66-D, Section 3.2. AT&T California claims, "[t]he information is competitively sensitive and has economic value to AT&T California, the disclosure of which would put AT&T California at an unfair competitive disadvantage."<sup>5</sup> AT&T California also claims that "if this confidential information was publicly disclosed, AT&T California competitors could use this information to AT&T California's competitive disadvantage, by adjusting their sales, marketing, and customer service practices to improperly target AT&T California's subscribers and/or locations AT&T California does not serve."<sup>6</sup> Similarly, Charter states that "[p]ublic release could provide highly competitively-sensitive data and trade secrets as defined by California Civil Code Section 3426.1 and California Evidence Code Section 1061."<sup>7</sup>

Recently, in Decision (D.) 20-12-021, the Commission considered issues of confidentiality and trade secrets as they related to an examination of telecommunications network infrastructure, facilities, policies, and practices. The

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<sup>4</sup> Pub. Util. Code, § 914.7(a)(9).

<sup>5</sup> Declaration of Ross Johnson in Support of Claim for Confidential Treatment by AT&T California of Information Regarding California Advanced Services Fund Projects, ¶ 3.

<sup>6</sup> *Id.*

<sup>7</sup> Declaration of Ross Johnson in Support of Claim for Confidential Treatment by AT&T California of Information Regarding California Advanced Services Fund Projects, ¶ 4.

Commission noted that “[I]nformation will not fall within the definition of a trade secret if it is readily ascertainable by a competitor or others . . .”<sup>8</sup> In order to receive CASF funding for their projects, AT&T California and Charter were required to publicly disclose the project area, the estimated number of potential new broadband subscribers and the deployment schedule.<sup>9</sup>

The statute governing the CASF program provides guidance as to what kind of service provider information may be publicized by the Commission. The Commission is required to annually provide existing facility-based broadband providers the opportunity to demonstrate that they will deploy broadband to a delineated unserved area and thus make that area ineligible for a CASF project.<sup>10</sup> In order to claim its “right of first refusal,” the service provider must provide, and the Commission may publicly disclose, “information regarding the area designated for a broadband deployment, the number of households or locations to be served, and the estimated date by which the deployment will be completed.”<sup>11</sup> The Commission is prohibited from disclosing, “information submitted to the commission that includes the provider’s plans for future broadband *deployment*,” aside from the information specified in Pub. Util. Code section 281(f)(4)(B)(ii).<sup>12</sup>

The project household broadband subscription data at issue will not reveal a provider’s plans for broadband deployment or any competitively sensitive information. The providers have already publicized their plans to deploy broadband infrastructure in their project areas, a requirement to receive funding from the CASF program. Thus, disclosure of the information at issue will not impact any future deployment plans by the providers. Moreover, the Commission, pursuant to CASF rules, already publicized the number of households to be served by broadband and the deployment schedule.<sup>13</sup> For Charter’s projects and in many other cases, the Commission also published the providers’ estimate of the number of households in the project area that would subscribe to broadband service.<sup>14</sup>

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<sup>8</sup> D.20-12-021, p. 23 (citations omitted).

<sup>9</sup> See D.07-12-054, pp. 31, 55, Finding of Fact 27; Res. T-17143, pp. A-3, A-4, D.18-12-018, Appendix I, pp. B-2, B-3.

<sup>10</sup> See Pub. Util. Code, § 281(f)(4)(A)(i).

<sup>11</sup> Pub. Util. Code, § 281(f)(4)(B)(ii).

<sup>12</sup> Pub. Util. Code, § 281(f)(4)(B)(i) (emphasis added).

<sup>13</sup> See D.07-12-054, pp. 31, 55, Finding of Fact 27; Res. T-17143, pp. A-3, A-4, D.18-12-018, Appendix I, pp. B-2, B-3.

<sup>14</sup> See Res.T-17680, pp. A-1, A-3, A-3; Ministerial Approval of Nine Charter Communications’ California Advanced Services Fund Infrastructure Grant Applications, Nov. 3, 2020, pp. 2-A, 3-A, 4-A, 5-A, 6-A, 7-A,

Thus, the disclosure at issue here would add only one bit of information: of the publicly-disclosed total number of households to be served by the CASF projects, how many of those households actually subscribe to broadband service. With regard to Charter, this disclosure would only report on the accuracy of Charter's publicly-disclosed estimate of the number of household subscribers in the project area. The number of households subscribing to broadband service for each project is readily ascertainable by competitors given all the data that has been made public for CASF projects.

In D.20-12-021, the Commission found:

If a claimant asserts that information has independent economic value by virtue of being secret, the claimant should do more than merely assert that the information would be helpful or of use to a competitor recipient in carrying out a specific activity. Such simple assertions are not enough to compel a fact finder to conclude the information is sufficiently valuable to provide the claimant with an economic advantage over others.<sup>15</sup>

AT&T California and Charter do not provide the substantiation necessary to demonstrate that their economic interests would be disadvantaged by the disclosure of project household subscriber data, especially given that a great deal of information about the projects has already been revealed. Moreover, in prior years' CASF Annual Reports,<sup>16</sup> for AT&T, the Commission publicly reported the same project household subscription data and reported total potential household subscribers for both AT&T and Charter. In their declarations, AT&T California and Charter do not allege that the past disclosure of this information has led to any competitive disadvantage. Without such evidence of competitive disadvantage, the Commission concludes that the disclosure of this information would likely not result in any competitive disadvantages.

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8-A, 9-A, available at

[https://www.cpuc.ca.gov/uploadedFiles/CPUC\\_Public\\_Website/Content/Utilities\\_and\\_Industries/Communications\\_-](https://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/Communications_-)

[Telecommunications and Broadband/Charter%20Ministerial%20Letter%20and%20Appendices%201-11%20-RO1.pdf](#) ;see also D.12-02-015, pp.25-26 and Appendix 1, Sec. V.15.; D.14-02-018, Appendix 2, Sec. 3.1.15; D.18-12-018, Appendix 1, pp. B-3.

<sup>15</sup> D.20-12-021, pp. 22-23, citing *Yield Dynamics, Inc. v. TEA Systems Corp.* (2007) 154 Cal.App.4th 547, 564-565.

<sup>16</sup>See e.g. CASF Annual Report, January 2019 - December 2019, Attachment B, p. 45 and

### **Public Interest in Disclosure of CASF Project Household Subscription Data**

In D.20-12-021, the Commission stated:

Trade secrets are generally the products of the creativity and hard work of the trade secret holder's efforts to further a business or otherwise reap economic rewards. The idea behind the trade secret privilege is that those who devote time and energy to creating something of value should be protected against the use of such hard won, and economically valuable, information by others who contribute nothing to the creation of the trade secret.<sup>17</sup>

In this case, the project household subscriber information is the product primarily of funding provided by California ratepayers through the CASF program; AT&T California and Charter utilized the CASF funding the deploy the broadband infrastructure.

The Legislature authorized the Commission to implement the CASF program to bring broadband access to underserved communities by publicly funding broadband deployment projects.<sup>18</sup> The Legislature also instituted the means by which it would track the effectiveness of the publicly-funded CASF program – through a report that included, among other things, the “[t]he number of formerly unserved households subscribing to broadband service in areas covered by projects funded by the [CASF].”<sup>19</sup>

The California Constitution favors the disclosure of governmental records by, among other things, stating that “[t]he people have the right of access to information concerning the conduct of the peoples’ business.”<sup>20</sup> The effectiveness of the CASF program, which is funded by California ratepayers, is part of “the people’s business.” The California Constitution further dictates that statutes, court rules, and other authority favoring disclosure be broadly construed, and that statutes, court rules, and other authority limiting disclosure be construed narrowly construed.<sup>21</sup> The CASF Annual Report to the Legislature should be a public document, allowing California ratepayers to determine the effectiveness of the program funded by surcharges that they pay.

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<sup>17</sup> D.20-12-021, p. 20 (citations omitted).

<sup>18</sup> See Pub. Util. Code, §§ 281(a)(d).

<sup>19</sup> Pub. Util. Code, § 914.7(a)(9).

<sup>20</sup> California Constitution, Article I, § 3(b)(1).

<sup>21</sup> See California Constitution, Article I, § 3(b)(2).

Moreover, the number of formerly unserved households subscribing to broadband service in each project at issue here is very similar to information that the Commission's rules require to be published in order to receive a grant.<sup>22</sup> This information is also similar to information that the Legislature authorizes to be publicized in the implementation of the CASF program.<sup>23</sup> The disclosure of the actual number of household subscribers for each project will allow the Legislature and the public to track the effectiveness of the CASF program against the publicly-disclosed initial statement of households to be served.

The public interest favors disclosure of the number of formerly unserved households subscribing to broadband service in each project.

### **Other Issues**

While this year's CASF Annual Report nears completion, it has been delayed due to the adoption of this resolution to resolve confidentiality concerns, pursuant to G.O. 66-D requirements. As a result, this year's CASF Annual Report will be submitted to the Legislature no later than April 30, 2021.

### **SAFETY CONSIDERATIONS**

The CASF program provides subsidies for the deployment of high-quality advanced broadband infrastructure throughout the state of California. Broadband infrastructure is vital to the operation and management of critical infrastructure and public safety and emergency response networks.

### **COMMENTS**

In compliance with Public Utilities Code § 311(g), a notice letter was e-mailed on March 12, 2021, informing all parties on the CASF Distribution List of the availability of the draft of this resolution and of the opportunity to comment. Comments are due within 20 days of the draft resolution being noticed in the Commission's Daily Calendar. Hence, comments on this draft resolution must be submitted no later than April 1, 2021. Reply comments must be submitted no

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<sup>22</sup> See D.07-12-054, pp. 31, 55, Finding of Fact 27; Res. T-17143, pp. A-3, A-4, D.18-12-018, Appendix I, pp. B-2, B-3.

<sup>23</sup> See Pub. Util. Code, § 281(f)(4)(B)(ii).

later than April 6, 2021. This letter also informed parties that the final resolution adopted by the Commission will be posted and available at <https://www.cpuc.ca.gov/documents/>.

The California Cable and Telecommunications Association (CCTA) submitted comments on April 1, 2021. No reply comments were received.

### **CCTA's Comments**

CCTA cites legal authorities that purportedly support the confidentiality of customer information.<sup>24</sup> CCTA points out that Pub. Util. Code section 281(f)(4) references information publicized in the right of first refusal procedures and not information publicized in the procedures of a CASF award.<sup>25</sup> CCTA also asserts that the resolution would “publicly disclos[e] the given subscription data at issue for the first time.”<sup>26</sup>

### **Staff's Response to Comments**

The authorities that CCTA cites for the confidentiality of customer information do not address situations where much of the customer information has already been disclosed; in fact, much of the authority CCTA cites concerned the confidentiality of the *identities* or the *contact information* of customers.<sup>27</sup> The information at issue here does not include customer identification or customer contact information.

CCTA correctly points out that the information required of providers pursuant to Pub. Util. Code section 281(f)(4) involves the CASF program's right of first refusal procedures, not the procedures for CASF awards. However, the CASF program requires the public disclosure of similar information – a description of the project area, the estimated number of potential new broadband subscribers and the deployment schedule – as part of a CASF award.<sup>28</sup> Thus, the resolution has been corrected, with citation to the CASF program's rules, instead of Section 281(f)(4). Section 281(f)(4) may still be referenced as guidance to the type of information that the Legislature authorizes for publication as part of the operation of the CASF program.

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<sup>24</sup> See CCTA Comments, pp. 2-3 & nn. 7-12.

<sup>25</sup> CCTA Comments, p. 5.

<sup>26</sup> See CCTA Comments, p. 3.

<sup>27</sup> See CCTA Comments, pp. 2-3 & nn. 7-12

<sup>28</sup> See D.07-12-054, pp. 31, 55, Finding of Fact 27; Res. T-17143, pp. A-3, A-4, D.18-12-018, Appendix I, pp. B-2, B-3.

CCTA incorrectly states that this resolution would publicize information not previously published before. In fact, for AT&T, the awarding resolutions already publicized the number of households to be served by broadband and the deployment schedule, and past CASF annual reports have publicized the actual number of households subscribed to broadband in the project areas.<sup>29</sup> For Charter, the CASF awarding document publicized the number of households to be served by broadband and the deployment schedule, as well as Charter's expectation of the number of households that would subscribe to broadband<sup>30</sup>

### **FINDINGS OF FACT**

1. Public Utilities Code section 914.7(a) mandates that the Commission submit to the Legislature an annual report on CASF program activities by April 1 of each year.
2. On January 4, 2021, CD sent data requests to all CASF infrastructure grantees to collect broadband subscription data and project statuses.
3. AT&T California and Charter designated their CASF project household subscribership data as confidential pursuant to G.O. 66-D, Section 3.2, claiming that disclosure of this information would lead to competitive disadvantage.
4. CASF grantees publicized plans to deploy broadband infrastructure in their project areas, as required to receive funding from the CASF program.
5. Disclosure of project household subscription data will not reveal any future deployment plans by the CASF grantees.
6. The number of households subscribing to broadband service for each project is readily ascertainable by competitors, given the data that has already been disclosed concerning the CASF projects.
7. AT&T California and Charter do not provide the substantiation necessary to demonstrate that their economic interests would be disadvantaged by the disclosure

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<sup>29</sup> See e.g. CASF Annual Report, January 2019 - December 2019, Attachment B, p. 45 and CASF Annual Report, January 2018 - December 2018, Attachment A, p. 53.



of project household subscriber data, especially given that a great deal of information about the projects has already been revealed.

8. In prior years' CASF Annual Reports, the Commission publicly reported project household subscription data; in their declarations, AT&T California and Charter do not allege that the past disclosure of this information has led to any competitive disadvantage.
9. The effectiveness of the CASF program, funded by California ratepayers to bridge "the Digital Divide," is part of the "people's business."
10. The public interest favors disclosure of CASF project subscription data for the CASF Annual Report.

### **CONCLUSIONS OF LAW**

1. Pursuant to Pub. Util. Code section 281, the Legislature authorized the Commission to implement the CASF program to bring broadband access to underserved communities, by publicly funding broadband deployment projects.
2. Pursuant to Pub. Util. Code section 914.7(a)(9), the Commission must report on the effectiveness of the CASF program by providing to the Legislature "[t]he number of formerly unserved households subscribing to broadband service in areas covered by projects funded by the [CASF]."
3. Information will not fall within the definition of a trade secret if it is readily ascertainable by a competitor or others.
4. Pursuant to CASF rules, in order to receive CASF funding for their projects, AT&T California and Charter were required to publicly disclose the number of households or locations to be served, and the deployment schedule for the project.
5. A claimant must do more than merely assert that information would be helpful or of use to a competitor recipient in carrying out a specific activity, for a fact finder to conclude that the information is sufficiently valuable to provide the claimant with an economic advantage over others.

6. The California Constitution, Article § 3(b)(1) favors the disclosure of governmental records by, among other things, stating that “[t]he people have the right of access to information concerning the conduct of the peoples’ business.”
7. The California Constitution, Article § 3(b)(2) dictates that statutes, court rules, and other authority favoring disclosure be broadly construed, and that statutes, court rules, and other authority limiting disclosure be construed narrowly construed s.

**ORDER**

1. Household broadband subscription data for CASF projects shall be made public.
2. This project household broadband subscription data will be included in the publicly-available CASF Annual Report.
3. The Commission shall submit this year’s CASF Annual Report to the Legislature no later than April 30, 2021.

This Resolution is effective today.

I hereby certify that the Public Utilities Commission adopted this Resolution at its regular meeting on \_\_\_\_\_.

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Rachel Peterson  
Executive Director