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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**Communications Division
Carrier Oversight and Programs Branch**

**RESOLUTION T-17274
May 20, 2010**

R E S O L U T I O N

Resolution T-17274 Amending Resolution T-17236 by Increasing the California Advanced Services Fund (CASF) Award to Ponderosa Cablevision for the Auberry Project to \$1,154,780

Summary

This Resolution amends Resolution T-17236 adopted by the Commission on November 20, 2009, by increasing the California Advanced Services Fund 10% matching funds to Ponderosa Cablevision (Ponderosa) from \$405,613 to \$1,154,780. The increase in the amount awarded to Ponderosa Cablevision is allowed under Ordering Paragraph (OP) 7 of Decision (D.) 09-07-020.

Background

On December 20, 2007, the Commission approved D.07-12-054 which established the two-year CASF program to provide matching funds of up to 40% of the total project costs for the deployment of broadband infrastructure in unserved and underserved areas in California.¹ Resolution T-17143, approved on June 12, 2008, adopted application requirements, scoring criteria for the award of funds, and a prescribed timeline for other filings and notifications including a projected Commission Meeting date for final approval of award(s).

On July 9, 2009, the Commission issued D.09-07-020 establishing new schedules and plans for the filing, review and approval of an additional round of broadband project requests. This decision also provides the potential for the applicants to seek CASF program funding while pursuing funding for broadband deployment grants issued under the American Recovery and Reinvestment Act (Recovery Act).² Because the federal grants under the Recovery Act

¹ SB 1193 (Chapter 393, Stats. of 2008) established the California Advanced Services Fund as a new public purpose program.

² The American Recovery and Reinvestment Act (Recovery Act) appropriates \$7.2 billion for grants and loans to support broadband deployment on a national level. The Recovery Act offers a unique and ground breaking opportunity for California to partner with the federal government and other state agencies in advancing the goal of bridging the digital divide.

can fund up to 80% of the project, the Commission provided applicants in D.09-07-020 the opportunity to seek an additional 10% funding coverage from the CASF, leaving only 10% for the applicant to provide.

As of May 5, 2010, the Commission has granted CASF funding of \$91.37 million for 44 projects covering 29,287 square miles, benefiting 313,283 potential households. \$12.04 million has been approved for 17 unserved area projects covering 4,303 square miles to benefit 33,327 households, while \$79.33 million has been approved for 27 underserved areas covering 24,984 square miles, to benefit 279,956 households.

Of the 44 projects approved for CASF funding, 14 projects totaling \$66.96 million have been granted conditional approval (i.e., approval is dependent on the applicants' securing Recovery Act funding for 80% of the broadband project's cost).

On November 20, 2009, in Resolution T-17236, the Commission approved contingent CASF funding of \$405,613 representing 10% of the total project costs to Ponderosa Cablevision for its Auberry project in Fresno County. Ponderosa submitted the same project for funding under the Recovery Act during the first application round.

On April 8, 2010, Ponderosa sent a letter to the Director of the Communications Division requesting an increase in their approved CASF award since the Recovery Act funding Ponderosa was able to secure was for a 50% loan/50% grant combination.

Discussion

This Resolution increases CASF funding to Ponderosa's Auberry project to \$1,154,780 in Fresno County.

In its Recovery Act funding request, Ponderosa filed a combined Broadband Technology Opportunities Program (BTOP) and Broadband Initiatives Program (BIP) funding request to the National Telecommunications and Information Administration (NTIA) and the Rural Utilities Service (RUS), respectively, during the first application round. Ponderosa sought an 80% BTOP grant from NTIA in concert with the CASF 10% award to make the project financially viable. Ponderosa was unable to secure an 80% grant funding from the BTOP but was awarded a BIP 50% loan of \$1,926,430 and 50% grant of \$1,926,430 from the RUS.

Ponderosa estimates that the 50% loan/50% grant combination will result in losses in income before taxes of over \$100,000 during the first 5 years. With a 50% loan/50% grant combination, the company is concerned that this project is not financially viable. While Ponderosa admits that the income from broadband service may eventually improve, this may occur after equipment replacement is needed. Ponderosa thus requests an increase in the CASF award to 50% of the \$1,926,430 loan amount in accordance with OP 7 of D.09-07-020. Ponderosa asserts that a higher CASF grant will allow this project to become financially viable.

Pursuant to Decision (D.) 09-07-020, OP 7:

In situations where an applicant receives an award of up to 10% matching California Advanced Service Fund funds, but where matching American Recovery and Reinvestment Act funds are awarded below the amount that the applicant requested, such applicants shall be permitted to reapply with the California Public Utilities Commission for additional California Advanced Service Fund funding up to a cumulative maximum of 40% of the broadband project cost, or 50% of the requested American Recovery and Reinvestment Act funding that was denied, whichever is less.

Therefore, CASF can fund up to a cumulative maximum of 40% of the broadband project cost, or 50% of the requested Recovery Act grant funding that was denied, whichever is less. The calculation of the two options is shown below and it shows that the CASF funding of 50% of the denied grant amount is less than 40% of the broadband project cost.

Option 1: 50% of the Denied Recovery grant amount requested

Recovery Act grant funding originally requested	\$3,424,764	
Recovery Act grant awarded	<u>- \$1,926,430</u>	
Amount not approved as grant under the Recovery Act	\$1,498,334	
CASF funding allowed (50% of \$1,498,334)		\$ <u>749,167.00</u>

Option 2: 40% of the total project cost

Ponderosa project cost filed	\$4,056,126	
40% of project cost (\$4,056,126x0.4)		\$ <u>1,622,450.40</u>

Based on these two options, CD recommends granting Ponderosa an additional CASF grant of \$749,167.00.

Thus, Ponderosa CASF total CASF funding will be:

CASF funding award authorized per Resolution T-17236	\$405,613
CASF funding allowed per D.09-07-020 (Option 1)	<u>\$749,167</u>
Total CASF Award	\$1,154,780

With the Recovery Act grant and with this adjustment to Ponderosa’s CASF funding award, Ponderosa will still be expected to fund the remainder of the total project cost of approximately \$974,000 (24% of the total project cost) through their internally generated funds and/or through other external funding source(s).

Loan Compliance Requirement

To prevent a scenario in which Ponderosa can leverage Recovery grants and loans with CASF awards to collect in excess of 100% of the project costs, CD recommends that the Commission direct Ponderosa to forego the portion of the loan³ equivalent to this CASF grant award. As a condition of this grant, Ponderosa should submit proof to CD's Director that it will be foregoing the portion of the loan equivalent to this CASF grant award. Further, CD should be copied on future correspondence between Ponderosa and RUS. CD will send notice of this resolution to the RUS Administrator.

Conclusion

The Commission finds CD's recommended increase in the CASF award to Ponderosa to \$1,154,780 or an increase of \$749,167 from the \$405,613 originally approved under Resolution T-17236 reasonable and consistent with Commission orders, and, therefore, adopts such award.

Approval of Ponderosa's funding is based on the provision of notification that Ponderosa is foregoing the Recovery Act loan award equivalent to this CASF award.

Except for the amount of CASF funding award addressed in this resolution, all conditions and requirements relative to CASF funding of Ponderosa's Auberry project as specified in Resolution T-17236 remain in force.

Comments on Draft Resolution

In compliance with PU Code § 311(g), a notice letter was emailed April 20, 2010, informing a) all CASF applicants filing under D.09-07-020, and b) parties on the service list of R.06-06-028 of the availability of the draft of this Resolution for public comments at the Commission's website <http://www.cpuc.ca.gov/static/documents/index.htm>. This letter also informed parties that the final conformed Resolution adopted by the Commission will be posted and will be available at this same website.

On May 4, 2010, The Division of Ratepayer Advocates (DRA) filed the following comments on the draft resolution:

- Draft resolutions amending previous resolutions should provide enough detail to evaluate exactly what the CASF is being asked to fund without the need to refer to previous resolutions;
- There is a need for a more granular level of detail in the applications;
- Require that the grant recipients waive any installation/service fees; and

³ Since Ponderosa has been awarded a combined 50% loan which was not anticipated and 50% grant, CASF will grant matching funds of up to 10% plus half of the amount requested from Recovery Act that was denied. This amount denied from ARRA would be 30% (80% requested less the 50% granted). One half of this amount would be 15%. This 15% will be added to the 10% previously approved in Resolution T-17236.

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- A benchmark should be used to determine if the costs of a proposed project are reasonable.

The Commission had previously addressed the concerns raised by DRA in responses to comments filed by DRA in previous Resolutions, e.g., Resolutions T-17236, T-17240, T-17241 and T-17242. With respect to this resolution, CD's responses to DRA's filed comments are:

- Providing enough details on draft resolutions amending previous resolutions

CD agrees that where necessary, sufficient details should be provided to a draft resolution amending a previous resolution. In this case, however, where the amendment only involves adjusting the CASF funding level involved, there is no need to be repetitious of previously disclosed information provided in Resolution T-17236. This resolution effectively covers the details explaining the rationale for the CASF funding increase granted to Ponderosa.

- Need for a more granular level of detail in the applications

The level of information required to be submitted by applicants is prescribed in Resolutions T-17143 and T-17233 adopted by the Commission on June 12, 2008 and October 29, 2009, respectively.

- Waiving of any installation/service fees

The CASF program only funds a portion of the infrastructure costs. Installation/service fees are costs associated with operations and are therefore, not within the purview of the CASF grant. Any charges attendant to the provision of broadband service such as installation fees, are left to the discretion of the applicant/recipient as these may affect their revenue flows and the project's viability.

- On using a benchmark cost

"The Commission has already determined that CASF cost per household data cannot be standardized for all areas. In fact, the latest response to this issue is on page 12 of Resolution T-17233⁴, where the Commission states that:

"the overriding goal of the CASF program - that is to provide broadband service to areas where there is none or to improve the quality of broadband service to areas that currently suffer from unreliable, spotty and inferior speeds not geared towards the present economic and business need. It was not the intent of the

⁴ Resolution T-17233, adopted by the Commission on October 29, 2009 approved CASF application requirements for broadband providers/applicants other than holders of telecommunications Certificate of Public Convenience and Necessity and registered wireless providers.

Commission to set a ceiling or an absolute minimum that applicants need to meet in order to qualify for funding. As the Commission has stated in several CASF resolutions adopting funding for projects, “low speed is better than no speed”. Likewise, the areas that are being funded and will be funded by CASF are areas that have no broadband precisely because these are high cost areas that are characterized by rugged terrain and low population density, which would not otherwise be economically viable or make business sense for private entities to invest in without CASF funding assistance.”

In summary, CASF project costs cannot be standardized precisely because not all areas have the same topographical characteristics, the same demographics or can be served by the same technology or infrastructure. Accordingly, we do not agree with the DRA recommendation that past approved CASF projects covering different areas should be used as an absolute basis to deny pending CASF projects, as it would unfairly prevent residents in areas of the State from receiving broadband service simply because they live in areas that are more costly to serve.”⁵

Findings

1. The CASF, implemented by Decision (D.) 07-12-054 was established as a two-year program that will provide matching funds of up to 40% of the total project costs for the deployment of broadband infrastructure in unserved and underserved areas in California.
2. Resolution T-17143, approved on June 12, 2008, adopted the application requirements and scoring criteria for the award of funds, a prescribed timeline for other filings and notifications including a projected Commission Meeting date for final approval of award(s).
3. On July 9, 2009, the Commission issued D.09-07-020 approving a new CASF schedule and plan for an additional round of broadband projects that would complement broadband grants awarded under the federal government’s American Recovery and Reinvestment Act (Recovery Act). While retaining the 40% matching grant process, the Commission in this Decision authorized providers an option of seeking a 10% grant from the CASF concurrent with efforts to seek an 80% grant from the ARRA fund.
4. On November 20, 2009, in Resolution T-17236, the Commission approved contingent CASF funding of \$405,613 representing 10% of the project costs to provide broadband service to unserved areas in Fresno County. Ponderosa submitted the same project for funding under the Recovery Act during the first application round.
5. On April 8, 2010, Ponderosa sent a letter to the Director of the Communications Division (CD) requesting for an increase in their approved CASF award since the Recovery Act funding Ponderosa was able to secure was for a 50% loan/50% grant combination.

⁵ Resolution T-17236, pages 6 and 7; Resolution T-17237, pages 7-8

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6. Ponderosa estimates that the 50% loan/50% grant combination will result in losses in income before taxes of over \$100,000 during the first 5 years and raises concerns for the company that the project is not financially viable.
7. Although the income from broadband service may eventually improve, this may occur after equipment replacement is required. Ponderosa thus requests an increase in the CASF award to 50% of the \$1,926,430 loan amount in accordance with OP#7 of D.09-07-020.
8. CD has determined that the increasing the CASF award to Ponderosa to \$1,154,780 or an increase of \$749,167 from the \$405,613 originally approved under Resolution T-17236 reasonable and consistent with Commission orders.
9. As a condition of this grant, Ponderosa should submit proof to CD's Director that it will be foregoing the portion of the loan equivalent to this CASF grant award. Further, CD should be copied on future correspondence between Ponderosa and RUS. CD will send notice of this to the RUS Administrator.
10. Except for the increase in Ponderosa's CASF award to \$1,154,780, all conditions and requirements relative to CASF funding of Ponderosa's Auberry project as specified in Resolution T-17236 should remain in force.
11. The Commission finds CD's recommended increase in the CASF award to Ponderosa for its Auberry project to \$1,154,780, as discussed in this resolution, to be reasonable and consistent with Commission orders and hereby adopts such award.
12. A notice letter was emailed on April 20, 2010, informing a) CASF applicants filing under D.09-07-020 and, b) parties on the service list of R.06-06-028 of the availability of the draft of this Resolution for public comments at the Commission's website <http://www.cpuc.ca.gov/static/documents/index.htm>. This letter also informed parties that the final conformed Resolution adopted by the Commission will be posted and available at this same website.
13. The Division of Ratepayer Advocates filed comments on the draft resolution on May 4, 2010. These comments are addressed by CD in this resolution.

THEREFORE, IT IS ORDERED that:

1. The California Advanced Services Fund funding for Ponderosa's Auberry Project in unserved areas in Fresno County is increased to \$1,154,780 as discussed in the Discussion section of this resolution.
2. As a condition of this grant increase, Ponderosa shall submit proof to the Communications Division (CD) Director that it is foregoing that portion of the loan equivalent to this CASF grant award. Further, CD shall be copied on future correspondence between Ponderosa and RUS. CD shall send notice of this Resolution to the RUS Administrator.
3. Except for the amount of CASF funding award addressed in this resolution, all conditions and requirements relative to CASF funding of Ponderosa's Auberry project as specified in Resolution T-17236 remain in force.

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This Resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on May 20, 2010. The following Commissioners approved it:

/s/ Paul Clanon

PAUL CLANON
Executive Director

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