

DRAFT

Agenda ID 9379
Ratesetting
April 22, 2010

Decision

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of AUDEAMUS, LLC to Modify
Resolution T-17245, dated January 21, 2010.

Application 10-02-013
(Filed February 12, 2010)

DECISION ADDRESSING THE AUDEAMUS, LLC APPLICATION TO
MODIFY RESOLUTION T-17245, APPROVAL OF FUNDING FOR THE
CALIFORNIA VALLEY BROADBAND PROJECT, FROM CALIFORNIA
ADVANCED SERVICES FUND (CASF) AMOUNTING TO \$7,893,700

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TO \$7,893,700**

Summary

This decision grants Application (A.) 10-02-013 by Audeamus, LLC (Audeamus) to modify Resolution T-17245 to remove census block groups (CBGs) 060190039004, 060190039005 and 060190041001 from California Valley Broadband's (CVB's) approved Unserved area and CBG 060190082002 from CVB's approved Underserved area and transfer these areas to Audeamus' California Advanced Services Fund (CASF) application.

Approval of this Application enables Audeamus to obtain CASF funding to match its award from the American Recovery and Reinvestment Act.¹

1. Background

On December 20, 2007, the Commission approved Decision (D.) 07-12-054 which established the two-year California Advanced Services Fund (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. Resolution (Res.) T-17143 approved on June 12, 2008, adopted application requirements, scoring criteria for the award of the funds, and a prescribed timeline for other filings and notifications. This same Resolution

¹ 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 groundbreaking opportunity for California to partner with the federal government and other state agencies in advancing the goal of bridging the digital divide.

directed interested applicants seeking funding for unserved and underserved projects, to file their project proposals and funding requests beginning July 24, 2008.

On July 9, 2009 the Commission issued D.09-07-020, which established new schedules and plans for the filing, review, and approval of an additional round of broadband project requests. While retaining the CASF 40% matching grant process, D.09-07-020 modified the CASF grant program to provide a secondary source of funds by extending 10% matching funds to applicants that provided 10% and received 80% of the project cost from the federal government's Recovery Act.

Following issuance of D.09-07-020, on July 17, 2009, CVB submitted a project proposal for the unserved and underserved areas of the Central Valley region including but not limited to CBGs 060190039004, 060190039005, 060190041001, and 060190082002 covering parts of Fresno County and of the communities of San Joaquin and Tranquility. CVB's project proposed to deploy a fixed wireless network using two unregulated (WiFi)² frequencies and one licensed (WiMAX)³ frequency that will deliver high speed internet services at speeds of up to 20 mbps download and up to 6 mbps upload to seven counties, 98,136 unserved households, and 43,960 underserved households covering an area of 13,375 square miles.

On August 14, 2009, Audeamus also submitted a project proposal for the unserved and underserved areas in the communities of San Joaquin and

² Wireless Fidelity

³ Worldwide Interoperability for Microwave Access

Tranquillity, and a portion of the West Fresno County. This project covered CBGs 060190039004, 060190039005, 060190041001, and 060190082002. Although there were competing CASF proposals covering the same area, Communications Division staff (staff) could not evaluate both applications using the CASF scoring criteria because Audeamus opted to wait for the Recovery Act's application results before providing staff with the information necessary to compare both requests on a consistent basis. Staff proceeded to complete its analysis of CVB's CASF proposal.

Consequently, staff recommended and the Commission adopted contingent CASF funding for the CVB in the amount of \$7,893,700 in Res. T-17245, effective January 21, 2010. The CASF funding was contingent upon CVB getting Recovery Act funding approved.

2. Recovery Act Round One Outcomes

On January 19, 2010, CVB received a denial letter for its broadband infrastructure project from the Recovery Act.

On January 25, 2010, Audeamus received a federal Recovery Act grant award for its broadband infrastructure project for the following six CBGs in the communities of San Joaquin and Tranquillity, and in areas of the West Fresno County:

- 060190082004, 060190082005 (San Joaquin)
- 060190082002 (Tranquillity)
- 060190041001, 060190039004, 060190039005 (West Fresno)

3. CASF Grant Consideration

To augment the federal Recovery Act grant award, Audeamus now seeks that the Commission authorize a CASF grant award for its application.

Because four of the six CBGs had been previously awarded to CVB by Res. T-17245, on January 21, 2010, Audeamus subsequently filed A.10-02-013 on February 12, 2010 to modify Resolution T-17245. This filing seeks to remove the West Fresno CBGs 060190039004, 060190039005, and 060190041001 from CVB's CASF-approved Unserved area and the Tranquillity CBG 060190082002 from CVB's CASF approved Underserved area, and to have these CBGs transferred to Audeamus for inclusion in its CASF application.

4. Discussion

Audeamus filed the application to remove and transfer the above mentioned CBG's from CVB's grant area because CVB did not get Recovery Act funding for four of these CBGs already granted to Audeamus.

The Recovery Act rules state that:

“[Rural Utilities Service] RUS will not fund more than one project to serve a given geographic area. If more than one application would serve any overlapping area, the application with the highest score will be funded; other applications for the same area will be rejected in their entirety unless RUS, in its discretion, determines that the extent of the overlap is de minimus.”⁴

The Commission rejected CVB's application for funding under the Recovery Act during the first round. Based on the Recovery Act rules, even if CVB re-submitted its application in the second round, these duplicate areas would once again be rejected since Audeamus has already received funding approval from the Recovery Act. Therefore, for the four duplicate CBGs, CVB

⁴ Notice of Funds Availability and Solicitation of Applications, RIN 0572-ZA01, Section IV(C)(5)(b)(i) (Friday, January 22, 2010)

will not be able to meet the CASF funding contingency in Res T-17245 that requires it to receive Recovery Act funding approval.

This decision does not affect other CBGs in CVB's Res. T-17245, and CVB should continue to deploy broadband as allowed by Res. T-17245A.

5. Conclusion

In accordance with the Recovery Act rule that prohibits duplicate funding for the same areas, the Commission approves Audeamus Application (A.10-02-013) to Modify Resolution T-17245 to remove and transfer the four duplicate CBGs from CVBs approved proposal to Audeamus proposal.

By transferring the CBGs disallowed in one application to an approved Recovery Act application, the Commission will continue to achieve the goal of deploying broadband in unserved and underserved areas of California.

6. Categorization and Need for Hearings

In Resolution ALJ 176-3249 dated February 2, 1010, the Commission preliminarily categorized this application as ratesetting, and preliminary determined that hearings were not necessary. No protests have been received. A public hearing is not necessary; therefore, it is not necessary to disturb the preliminary determinations. The preliminary ratesetting categorization is affirmed.

7. Waiver of Comment Period

No protests were filed to the Application and no hearing was held. Today's decision grants the relief requested in an uncontested matter. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities code and Rule 14.6(c) (2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

Findings of Fact

1. On July 17, 2009, CVB submitted a project proposal for the Central Valley region, including, but not limited, to CBGs 060190039004, 060190039005, 060190041001, and 060190082002.

2. On August 14, 2009 Audeamus submitted a project proposal for the communities of San Joaquin, Tranquillity, and a portion of west Fresno County, including CBGs 060190039004, 060190039005, 060190041001, and 060190082002.

3. On January 21, 2010 the Commission adopted Res. T-17245, approving funding of \$7,893,700 for the CVB project from the CASF, and made the award contingent on CVB receiving a Recovery Act grant of 80% of the total estimated cost.

4. On January 19, 2010, CVB received a denial letter for its broadband infrastructure project under the Recovery Act.

5. On January 25, 2010, Audeamus received a grant award for its broadband infrastructure project under the Recovery Act.

6. On February 12, 2010, Audeamus filed an application to modify Resolution T-17245 to remove and transfer CBGs 060190039004, 060190039005, 060190041001, and 060190082002 from CVB's proposed areas to Audeamus's proposal.

7. D. 07-12-054 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.

8. Resolution T-17143 adopted CASF application guidelines, scoring criteria for the award of funds, and a prescribed timeline for other filings and notifications.

9. While retaining the CASF 40% matching grant, D.09-07-020 established new schedules and plans for the filing, review and approval of an additional round of broadband project requests in conjunction with the American Recovery and Reinvestment Act.

10. No protests were filed on the application.

Conclusions of Law

1. The Recovery Rules provide that “RUS will not fund more than one project to serve a given geographic area. If more than one application would serve any overlapping area, the application with the highest score will be funded; other applications for the same area will be rejected in their entirety unless RUS, in its discretion, determines that the extent of the overlap is de minimus.”

2. For the CBGs in question, CVB cannot meet the CASF Funding Contingency in Res. T-17245 because the Recovery Act prohibits “duplicate funding” in a given geographic area.

3. CVB should continue to deploy broadband as allowed by Res. T-17245A.

4. The Commission should still achieve the goal of deploying broadband in unserved and underserved areas of California will still be achieved because the CBGs that are disallowed in one application are being transferred to an approved Recovery Act application.

5. A.10-02-013 should be closed.

6. This order should be effective immediately so that Audeamus can deploy broadband in unserved and underserved areas of California without further delay.

O R D E R

IT IS ORDERED that:

1. The Application of Audeamus LLC to Modify Resolution T-17245 to remove and transfer Census Block Groups 060190039004, 060190039005, 060190041001 and 060190082002 from Central Valley Broadband's proposed areas to Audeamus LLC's proposed areas, is granted.
2. Resolution T-17245A, attached to this decision, modifies Central Valley Broadband's original California Advanced Services Fund grant.
3. The Executive Director shall cause to be served on all interested parties on the service list for Application 10-02-013 today's decision disposing of the application to modify Resolution T-17245.
4. Application 10-02-013 is closed.

This order is effective today.

Dated _____, at San Francisco, California.