

Date of Issuance: November 23, 2009

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**Communications Division
Carrier Oversight and Programs Branch**

**RESOLUTION T- 17236
November 20, 2009**

R E S O L U T I O N

Resolution T- 17236 Approval of Funding for the Ponderosa Cablevision (U-6470-C) Auberry project, from the California Advanced Services Fund (CASF), Amounting to \$405,613.

Summary

This Resolution adopts contingent funding for the Ponderosa Cablevision (Ponderosa) Auberry project, amounting to \$405,613 from the California Advanced Services Fund (CASF). This amount represents 10% of the project costs to provide broadband service to unserved areas in accordance with Commission Resolution T-17143 and Decision (D.) 09-07-020.

Background

On December 20, 2007, the Commission approved Decision (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, adopts the 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). This same Resolution directed interested applicants seeking funding for unserved and underserved projects, to file their project proposals and funding requests beginning July 24, 2008 and August 25, 2008, respectively.

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

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

Recovery and Reinvestment Act (ARRA).² Because the federal grants under ARRA 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 October 29, 2009, \$15.12 million has been granted for 30 projects covering 4,942 square miles, benefiting 41,209 potential households as follows:

- Unserved: \$11.64 million, 16 projects, 4,284 square miles, and 32,284 households.
- Underserved: \$3.48 million, 14 projects, 658 square miles, and 8,925 households.

Notice/Protests

The Census Block Group (CBG) list for the Auberry project appeared by county on the Commission's CASF website page under "(1) UNSERVED areas proposed to be served as of July 17, 2009: Census Block Groups (CBGs)." Challenges were filed by Comcast, AT&T, and Ponderosa themselves on all of the proposed CBGs. Communications Division (CD) proceeded to review and analyze these project areas to verify that they were indeed unserved as of the applicants' filing date.

Discussion

This Resolution adopts CD's recommended contingent funding award of \$405,613 for the Ponderosa Auberry project in Fresno County. Key project information is on page A-1 of Appendix A. A shapefile of Ponderosa's proposed Auberry project can be found on page A-2 of Appendix A. Page A-3 of Appendix A locates the project on a map of California.

Ponderosa submitted its Auberry application on July 17, 2009. The total project cost is estimated at \$4,056,126, of which 10%, or \$405,613, is being requested from CASF as a match to their 80% ARRA fund request.

Ponderosa currently provides DSL service in southern Madera County and northern Fresno County including the communities of Friant, Prather, North Fork, Auberry, and Shaver Lake. Ponderosa Cablevision purchases DSL access service on a wholesale basis from the local telephone company. Currently Ponderosa offers 2 levels of DSL service. Ponderosa's current service area borders the proposed service area on 2 sides, north and west.

Ponderosa plans to extend its DSL coverage into the proposed area, Township 11 in Fresno County, by utilizing fiber to the home technology, utilizing the ITU-T G 984 standard. Ponderosa plans to extend its DSL coverage into the proposed area, Township 11 in Fresno

² The American recovery and Reinvestment Act (ARRA) appropriates \$7.2 billion for grants and loans to support broadband deployment on a national level. ARRA 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.

County, by utilizing fiber to the home technology, utilizing the ITU-T G 984 standard. Ponderosa will install two OLT terminals. These small cabinets will be constructed on county rights of way. All other construction will utilize existing PG&E poles. Each terminal is capable of providing within their coverage area very high speed broadband connections. These terminals will be linked to current Ponderosa facilities in the existing coverage area. There is no electrical power in the system between the OLTs and the ONT. The ONT terminates the fiber at the residence or business and it has backup power to continue to provide service in the event of power outage. The ONT can be equipped with numerous in home distribution options including Ethernet over coax, Ethernet over power line, and traditional wired and wireless Ethernet options.

This project will be able to deliver service to 1,043 households covering an area of about 18.65 square miles in 4 CBGs at average speeds 30 mbps download and 13.33 mbps upload. CD has recommended the Auberry project for approval of CASF funding award and the Commission finds this recommendation to be reasonable and consistent with past Commission orders.

For qualification purposes under the CASF program, unserved areas are defined as areas that are not served by any form of facilities-based broadband, or where Internet connectivity is available only through dial-up service or satellite. CD reviewed this project's eligibility through analysis of the required submitted data. These data include, but are not limited to: proof of Certificate of Public Convenience and Necessity (CPCN) registration; descriptions of current and proposed broadband infrastructure; Geographic Information System (GIS) formatted Shapefiles mapping the subject areas; assertion that the area is underserved; potential subscriber size and household incomes; project construction schedule; project budget; proposed pricing and commitment period for new subscribers; and, financial qualifications of the applicant. In addition, CD reviewed the Shapefiles submitted which mapped the broadband deployment proposed using United States 2000 Census data, the January, 2008, Broadband Task Force Report (BBTF) including its on-line maps, and the revised August 10, 2009, California Broadband Task Force (CBTF) maps, among others.

CD conducted its independent review and analysis of the Auberry project to verify that the areas proposed to be served by Ponderosa did not coincide with areas shown as being served on the BBTF maps. Of the four CBGs in this proposed project, all were formally challenged by Comcast, AT&T, and Ponderosa themselves. Ponderosa submitted additional information demonstrating that there was not in fact any broadband service in the contested areas. CD determined that the CBGs covering the proposed area are qualified as unserved as defined in Resolution T-17143.

The Application Requirements and Guidelines on the awarding of CASF Funds provide that the execution of a Performance Bond is not required if 10% of the total project costs come from the applicant's capital budget and is not obtained from outside financing sources.

Therefore, a performance bond is not required under the CASF because at least 10% of the project cost will come from Ponderosa's capital budget.

Ponderosa should comply with all guidelines, requirements, and conditions associated with the granting of CASF funds as specified in Resolution T-17143 including the submission of FCC Form 477.

The Commission's grant of CASF funding is subject to the California Environmental Quality Act (CEQA). However, because the proposed project will be constructed on existing PG&E poles, it can be seen with certainty that the project will not have a significant impact on the environment. Therefore, no Proponent's Environmental Assessments should be required. If any special permits are required Ponderosa agreed to notify the CPUC as appropriate and will comply with the conditions associated with the granting of CASF funds as specified in T-17143 including the submission of FCC Form 477.

The receipt of the CASF grant should be contingent on Ponderosa receiving the 80% ARRA grant on its Auberry unserved project. If the applicant is not successful in its request for the ARRA grant or if of the ARRA grant is less than 80%, then Ponderosa may request additional CASF funds in accordance with Ordering Paragraph No. 7 of D.09-07-020. The granting of additional funds will be contingent on the availability of CASF funds.

If Ponderosa is unable to obtain ARRA funding and will not construct the Auberry unserved project, then Ponderosa should notify the Director of the Communications Division promptly so that CASF funds may be reallocated to other grants.

Payments to CASF Recipients

Submission of invoices from and payments to Ponderosa shall be made in accordance with Section IX of Appendix A of Resolution T-17143 and according to the guidelines and supporting documentation required in Resolution T-17143.

Payment to Ponderosa shall essentially follow the process adopted for funds created under Public Utilities Code §270. The following table describes the timeline for processing CASF payments.

Event	Payment Cycle 1 (Day/Month)	Payment Cycle 2 (Day/Month)
Invoices due from Ponderosa to CD	5 th of Month 1	20 th of Month 1
Payment letters from CD to Information and Management Services Division (IMSD) ³	On 19 th of Month 1	On 4 th of Month 2
Invoices submitted from IMSD to State Controller's Office (SCO) for payments	20 th through 26 th of Month 1	5 th through 13 th of Month 2

Ponderosa may submit invoices under Payment Cycle 1 or 2.

If any date in this payment schedule falls on a weekend or holiday, that date will be advanced to the next business day but the remaining dates in the payment schedule will remain unchanged. The state controller's office (SCO) requires 14 to 21 days to issue payment from the day that requests are received by SCO.

Comments on Draft Resolution

DRA submitted comments to Resolutions T-17236 on November 3rd. DRA's comments and CD discussion of those comments are reflected below:

I. DRA Comments

A. Project Costs Are Too High on a "Per-Household" Basis

DRA recommended that the Commission set a benchmark to determine the reasonableness of project costs and commented on the following:

- No justification is required from the applicant on the project cost
- A purported "competitive bidding" process is relied on to keep project costs in check
- No competition is evident except in the area covered by Resolution T-17197.

Further, DRA recommended that the Commission should perform a cost review of applications for areas where there are no competitive bids since it believes the market cannot constrain costs and cannot check on cost reasonableness where competition does not exist.

³ The above schedule is contingent on the CASF recipient submitting clear, complete, and error-free invoices to CD. Additional time to process payments may be necessary if CD finds problems with the submitted invoices.

DRA also suggesting using a benchmark cost per household from past CASF projects to compare costs of various pending CASF projects as a proxy to determine whether costs are reasonable. DRA calculated the cost per household to be \$956 based on projects approved as of September 24th and it has taken issue with those pending resolutions (e.g. Race, Ponderosa Cablevision) with DRA calculated cost per household figures for these pending resolutions above this level.

In reviewing DRA's comments, we note that DRA miscalculated the cost per household, relying on total costs rather than CASF costs, and has erroneously assumed that all of the CASF projects approved as of September 24, 2009 are seeking 40% funding. Some applicants only requested 10% CASF funding with 80% coming from ARRA. Also, some of the projects include Contribution in Aid of Construction costs in addition to the 40% CASF funds. If the total CASF funds approved to date as of September 24, 2009 of \$12.6 million is divided by the total number of households at 32,943, the result would be \$384 per household, not \$956.

DRA notes that the total project cost per household for Ponderosa, \$3,889, is four times the size of previous projects' average. 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 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

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.

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.

With respect to DRA competitive bidding comments, again this issue has been previously raised by DRA and addressed by the Commission. The Commission has already stated in Resolutions T-17234 and T-17229:

“as the CASF/ ARRA process relies on a competitive bidding process to keep an applicant’s costs and proposed installation fees in check, rather than a cost reasonableness review requiring the applicant to justify details of specific project costs and proposed installation fees. Under the established CASF/ ARRA process, an applicant risks not receiving a CASF/ ARRA award if its costs are too high and other carriers bid at lower costs.”

Page 13 of Resolution T-17233 also states:

“We also take exception to the statement of parties that there is no competition. Under existing rules, CBGs and Zip Codes are posted on the CASF webpage 7 days after an application is received. Any party who wishes to submit a competing application may do so by submitting a letter of intent to submit a counter-proposal and / or submit a counter-proposal directly within the prescribed timelines as stated in Resolution T-17143 and D.09-07-020. As Resolution T-17197 and draft Resolution T-17225 demonstrate, competition does exist.”

Where there is no counter-proposal or competing proposal submitted for an area, this implies that the broadband cost for developing broadband infrastructure in the area is too high that even with the 40% or 10% CASF funds match, broadband providers are not confident that it would make business sense for them to invest in the area.

In summary, we believe the CASF competitive bidding process renders cost reasonableness review as an unnecessary step in our program and one that will cause unserved and underserved communities in the state a delay in receiving broadband service.

B. The CASF Program Requires an Audit

DRA commented that all resolutions should include an audit requirement as provided in the CASF legislation and D.07-12-054. However, we note that all

resolutions have an Ordering Paragraph to the effect that they will comply with all the guidelines, requirements and conditions associated with the CASF funds award as specified in resolution T-17143 and D.07-09-020. Page A-14 of Resolution T-17143 describes the payment procedure, which includes the submission of progress reports and invoices, as well as the right of the Commission to conduct any necessary audit, verification, and discovery during project implementation / construction to ensure that CASF funds are spent in accordance with Commission approval. Thus, the audit requirement and all other requirements applicable to CASF fund recipients as specified in Resolution T-17143 are already addressed in the Ordering Paragraph.

Likewise, as DRA pointed out, the Commission, in SB 1193 and AB 1555, financial and performance audits of the implementation and effectiveness of the CASF is required and a report on the said audits submitted to the Legislature by December 31, 2010. The Commission will comply with this requirement.

C. Project Costs Are Confusing

DRA commented that the draft resolutions do not describe the projects in sufficient detail to evaluate exactly what the CASF is asked to fund. DRA recommends that the Draft Resolution clearly define the project's customers by deleting any references to household customers, including the reference to households in Appendix A.

With respect to these comments, we believe that the project description detailed in this resolution adequately describes the capital infrastructure the CASF grant money is funding. As for the use of household metrics, households are adequately defined in Resolution T-17143.

Ponderosa submitted comments to Resolutions T-17236 on November 10th. Ponderosa's comments and CD discussion of those comments are reflected below:

II. Ponderosa Cablevision Comments

Ponderosa commented that there was no deficiency in their filing according to the rules and procedures for CASF applications as set forth in Resolution T-17143. They further state that if DRA wishes to propose modifications to Resolution T- 17143 to create a cost per subscriber threshold for a CASF award, such a change in a final Commission resolution must be sought by a petition for modification.

Ponderosa reiterated that the area they are proposing to serve costly to serve that that the Commission has already approved unserved applications with higher construction costs per subscriber than theirs.

We agree with Ponderosa that this resolution is not the appropriate place to argue fundamental changes to the CASF. Ponderosa has demonstrated that their proposed area is high cost, and sufficiently detailed their plans for use of the grant money.

For the reasons expressed above we recommend the Ponderosa Cablevision Auberry Project for CASF funding.

Findings

1. The CASF 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, adopts 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). T-17143 directed interested applicants seeking funding for unserved projects to file their project proposals and funding requests beginning July 24, 2008.
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 (ARRA). 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. A list of census block groups (CBGs) appeared by county on the Commission's CASF website page under "UNSERVED areas proposed to be served as of July 17, 2009: Census Block Groups (CBGs)." The Communications Division (CD) proceeded with its independent review and analysis of this project area to verify that it was unserved as of the applicant's filing date.
5. Unserved areas are defined as areas that are not served by any form of facilities-based broadband, or where Internet connectivity is available only through dial-up service or satellite.
6. Ponderosa filed an application on July 17, 2009, under D.09-07-020. CD reviewed the Ponderosa Auberry project eligibility through the analysis of required data submitted. These data include, but are not limited to: proof of Certificate of Public Convenience and Necessity (CPCN) registration; descriptions of current and proposed broadband infrastructure; geographic information system (GIS) formatted Shapefiles mapping the subject areas; assertion that the area is unserved; potential subscriber size and household

incomes; project construction schedule; project budget; proposed pricing and commitment period for new subscribers; and, financial qualifications of the applicant.

7. Shapefiles, which mapped the broadband deployment, were reviewed by CD using sources including, but not limited to, the United States 2000 Census data, the January, 2008, Broadband Task Force Report, and the revised August 10, 2009, California Broadband Task Force map, among others. These maps helped to verify the existence or non-existence of broadband service areas and broadband speeds, where available.
8. Communications Division verified this project and, when necessary, requested additional information and/or meetings with the applicant to clarify its project proposal. Of the 4 CBGs in this proposed project, 1 was formally challenged. Communications Division determined that the CBGs covering the proposed area are qualified as unserved as defined in Resolution T-17143.
9. After its review, Communications Division determined the Ponderosa Auberry project application for unserved areas covering 4 CBGs is eligible to receive \$405,613 in funding under CASF.
10. The Commission finds Communications Division's recommended contingent California Advanced Services Fund (CASF) award for unserved areas for the Ponderosa Cablevision Auberry project as discussed in this resolution and summarized in Appendix A to be reasonable and consistent with past Commission orders and, therefore, should be adopted. The California Advanced Services Fund (CASF) was implemented by Decision (D.) 07-12-054.
11. The posting of a performance bond by Ponderosa is not required as 10% of the total project cost will be financed through their capital budget.
12. Ponderosa should comply with all guidelines, requirements, and conditions associated with the granting of CASF funds as specified in Resolution T-17143 including the submission of FCC Form 477.
13. Since Ponderosa's Auberry project will be constructed on existing PG&E poles, it can be seen with certainty that the project will not have a significant impact on the environment. Therefore the Project is exempt from review under the California Environmental Quality Act (CEQA).
14. No Proponent's Environmental Assessments should be required. If any special permits are required Ponderosa agreed to notify the CPUC as appropriate and will comply with the conditions associated with the granting of CASF funds as specified in T-17143 including the submission of FCC Form 477.

15. The receipt of the CASF grant should be contingent on Ponderosa receiving the 80% ARRA grant on its Auberry unserved project. If the applicant is not successful in its request for the ARRA grant or if of the ARRA grant is less than 80%, then Ponderosa may request additional CASF funds in accordance with Ordering Paragraph No. 7 of D.09-07-020. The granting of additional funds will be contingent on the availability of CASF funds.
16. If Ponderosa is unable to obtain ARRA funding and will not construct the Auberry unserved project, then Ponderosa should notify the Director of the Communications Division promptly so that CASF funds may be reallocated to other grants.
17. A notice letter was emailed on October 21, 2009, informing a) all applicants filing for unserved and underserved areas 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.
18. Comments filed by the Division of Ratepayers Advocates and Ponderosa Cablevision are addressed in this resolution.

THEREFORE, IT IS ORDERED that:

1. The California Advanced Services Fund shall award contingent funding of \$405,613 from the California Advanced Services Fund to Ponderosa Cablevision (Ponderosa) for the Auberry project to provide service in unserved areas as described in the Discussion section and summarized in Appendix A of this Resolution.
2. Ponderosa shall not be required to post a performance bond.
3. Ponderosa shall comply with all guidelines, requirements, and conditions associated with the CASF funds award as specified in Resolution T-17143 and D.09-07-020.
4. The receipt of the CASF grant should be contingent on Ponderosa receiving the 80% ARRA grant on its Auberry unserved project. If the applicant is not successful in its request for the ARRA grant or if of the ARRA grant is less than 80%, then Ponderosa may request additional CASF funds in accordance with Ordering Paragraph No. 7 of D.09-07-020. The granting of additional funds will be contingent on the availability of CASF funds.
5. Ponderosa shall promptly notify the Director of the Communications Division if Ponderosa is unable to obtain ARRA funding and will not construct the Auberry unserved project, so that CASF funds may be reallocated to other grants.
6. The program fund payment of \$405,613 for this Commission-approved unserved project shall be paid out of the CASF fund in accordance with the guidelines adopted in Resolution T-17143 and D.09-07-020.
7. Payments to Ponderosa shall be in accordance with Section IX of Appendix A of Resolution T-17143 and in accordance with the process defined in the "Payments to CASF Recipients" section of this resolution.

Resolution T- 17236
CD/ALK

This Resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on November 20, 2009. The following Commissioners approved it:

/s/ Paul Clanon

PAUL CLANON
Executive Director

MICHAEL R. PEEVEY
President

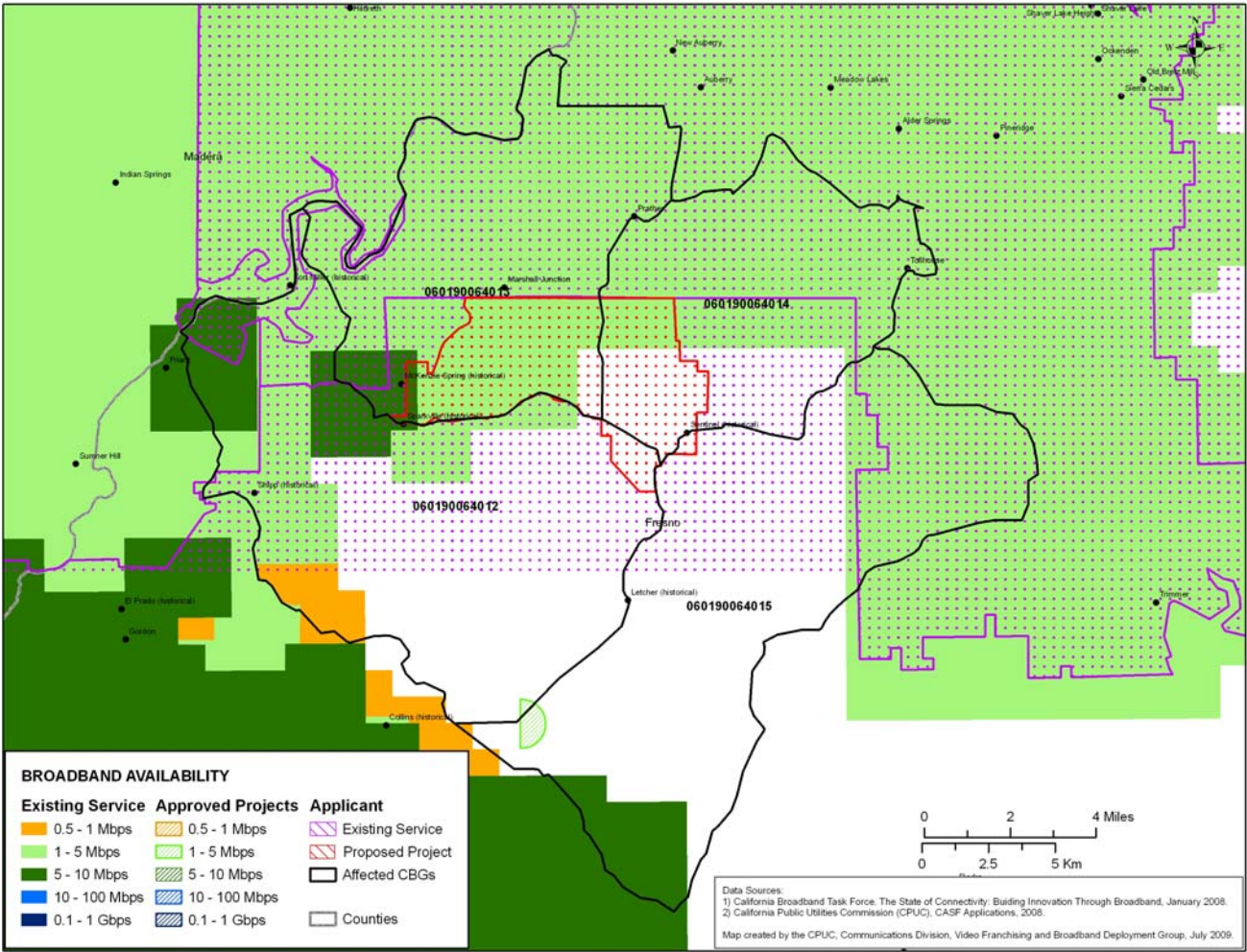
DIAN M. GRUENEICH

JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners

APPENDIX A
Resolution T- 17236
Ponderosa Cablevision Auberry Project, Key Information

Ponderosa Cablevision			
1	Project ID	286	
2	Project Name	Ponderosa Cablevision Auberry	
3	Project Plan	Installation of two OLT terminals which will provide customers with FTTH.	
4	Project Size (in square miles)	18.65	
5	Download speed	30 Mbps	
6	Upload speed	13.33 Mbps	
7	Location	Fresno	
a)	Community Names	Mount Diablo Base, Meridian	
b)	CBGs/Household Income		
#		CBG	Income
1		060190064012	\$69,375
2		060190064013	\$47,727
3		060190064014	\$44,700
4		060190064015	\$55,682
c)	ZIP Codes		
		93619	
		93651	
		93626	
8	Estimated Potential Subscriber Size		
a)	Households	1,043	
9	Deployment Schedule (from Commission approval)	12 Months	
10	Proposed Project Budget	\$4,056,126	
b)	CASF (10%)	\$405,613	
c)	CIAC	\$0	
d)	Amount of CASF Funds Requested	\$405,613	

APPENDIX A
Resolution T- 17236
Ponderosa Cablevision Auberry Project Shapefiles



APPENDIX A
Resolution T- 17236
Ponderosa Cablevision Auberry Statewide Map



END OF APPENDIX A