

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Resolution T-17452 Authorizes Up to
Ten Percent Matching Funds From the
California Advanced Services Fund for
Federal Communications Commission
Rural Broadband Experiments in
California

(Served August 11, 2014)

**OPENING COMMENTS OF
THE OFFICE OF RATEPAYER ADVOCATES
ON DRAFT RESOLUTION T-17452**

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I. INTRODUCTION

Pursuant to Rule 14.5 of the California Public Utilities Commission (CPUC or Commission) Rules of Practice and Procedure, the Office of Ratepayer Advocates (ORA) hereby submits these opening comments on draft Resolution T-17452 (Resolution) authorizing up to ten percent matching funds from the California Advanced Services Fund (CASF) for Federal Communications Commission (FCC) Rural Broadband Experiments (Experiments) in California.

The FCC Experiments are a subset of projects deriving funding from the Connect America Fund.¹ Draft Resolution T-17452 proposes to utilize monies from the CASF as matching funds to support FCC Experiment projects in California.² The application deadline for applicants interested in participating in the FCC Experiments is October 14, 2014.³ Specifically, the draft Resolution “pre-authorizes CASF monies for any California projects that the FCC selects and provides for such projects to be subject to the FCC Rural Broadband Experiments rules, not the CASF program rules.”⁴

ORA supports the Commission’s initiative to leverage Federal funding for broadband deployment in the State by allocating CASF funds as matching funds for the FCC’s Experiment projects. However, given the time limitations placed on CASF staff to conduct its standard review of such applications⁵ and hence forgo such review, the Commission should adopt a transparent set of requirements for the disbursement of CASF funds to FCC Experiment grantees, as further discussed below. A set of transparent requirements will ensure an increased level of CASF oversight over how such

¹ Connect America Fund et al., Report and Order, WC Docket No.10-90 et al.; (FCC 14-98), re. July 14, 2014, (*hereinafter* CAF R&O) at ¶ 1.

² Only entities certified as Eligible Telecommunications Carriers (ETCs) are eligible to participate in the Experiments. *See* CAF R&O at ¶¶ 22 and 23.

³ DRAFT California Public Utilities Commission (CPUC) Resolution T-17452, Authorizes Up to Ten Percent Matching Funds From the California Advanced Services Fund for Federal Communications Commission Rural Broadband Experiments in California, at 4-5, *hereinafter* Draft Resolution.

⁴ *Id.* at 1.

⁵ This deadline leaves inadequate time for CASF to conduct an independent review of matching grant applicants. *Id.* at 7.

funds are utilized which will protect the interests of ratepayers and program beneficiaries alike.

II. DISCUSSION

A. Expand Payment and Reporting Requirements to CASF Grant Recipients

ORA recognizes that the expedited timeline of the FCC Experiments application deadline of October 14, 2014 prevents CASF staff from reviewing matching grant application materials in detail. Thus, additional oversight steps should be taken prior to disbursement of CASF funds. Currently, the draft Resolution “exempts projects that the FCC may fund with CASF Infrastructure Grant Account matching funds from the CASF program requirements[.]” except for the requirement that the project comply with the California Environmental Quality Act (CEQA).⁶ The projects must instead comply with FCC regulatory procedure, under FCC oversight. To obtain CASF funds, the FCC grant recipient will submit “payment requests . . . submitted to the Director of the Communications Division and substantiated with invoices and supporting documentation.”⁷ Further, “[t]he Commission will retain audit rights and also require that selected Experiments project sponsors provide the Commission with copies of any reports that they submit to the FCC”⁸ and conditions continued matching grant funding on compliance with all relevant federal universal service fund rules, including reporting and audits.⁹

The Commission should adopt clear rules as to the compliance obligations of the grant recipients and the oversight measures CASF staff will take. Currently, there are no clear oversight mechanisms to confirm compliance with all pertinent federal requirements, upon which CASF support depends, leaving only “the FCC . . . responsible

⁶ Draft Resolution, *supra* note 2, at 8.

⁷ *Id.*

⁸ *Id.* FCC regulations require an interim report and an annual report. See CAF R&O, *supra* note 1, at ¶¶ 81 and 77.

⁹ *Id.* at 9, citing *Tech Transitions Order*, 29 FCC Rec at 1477 ¶ 128 (2014).

for ensuring those are met.”¹⁰ Grantees receiving CASF funding should be required to supply the CPUC with specific critical information at the time of the first payment request, particularly because even interim reports (see below) will not be sent to the FCC or CPUC until after first disbursements are made.¹¹ Grantees should at minimum provide the following information when seeking its first CASF payment:

- Proof of *initial* or *continued* FCC Experiments approval
- Amount of the approved FCC grant award and payments to date
- Approved project budget information to ensure that CASF payment requests fall within projected budgets
- Proof of status as an eligible telecommunications carrier (ETC)
- Proof of CEQA compliance
- Notarized Affidavit that to the best of the applicant’s knowledge all the statements and representations made in the payment information submitted are true and correct and applicant agrees to comply with all federal and state statutes, rules, and regulations, covering broadband services and state contractual rules and regulations, including Rules 1.11 and 2.2 of the California Public Utilities Commission’s Rules of Practice and Procedure.

Furthermore, the Commission should instruct grantees to provide a copy of the required FCC periodic (interim and annual) reports. These instructions should include to whom and where those reports need to be directed at the CPUC, and the timing by which grant recipients must file the reports with the CPUC; e.g. at the time grantees come for CASF payment or at the time the report is filed with the FCC. While ORA agrees that the matching grant program will be an expeditious way to gain information on new projects and partnerships, the CPUC must take ownership of CASF’s role by setting clear

¹⁰ *Id.* at 8.

¹¹ CAF R&O, *supra* note 1, at ¶81, *stating*: “we will require all recipients to file an interim report on the November 1st after they receive their first disbursement.” (Emphasis added.)

requirements and oversight mechanisms for those recipients of CASF funds substantial enough to protect CASF and ratepayer interests in the event of default.

B. Safeguards Applicable to Grant Recipients

In order for the FCC to disburse funds to winning grant recipients, the recipients must file proof of their status as an ETC within 90 days of the public notice of winnings bids.¹² As mentioned above, matching grant recipients should be required to file an affidavit attesting compliance with all State and Federal rules including P.U. Code Rules 1.11 and 2.2 of the Commission’s rules of practice and procedure. Just like all other CASF Infrastructure Grant recipients who submit such affidavit, including telephone corporations with a Certificate of Public Convenience and Necessity (CPCN), the affidavit should be required from FCC Experiments grantees receiving CASF matching funds to ensure compliance with all State rules. This affidavit should be filed before any CASF matching grants are disbursed, acting as a safeguard for program funds.

C. Increase Transparency of Projects Receiving CASF Funds

The draft Resolution notes that a “primary motivation for [the] Resolution is the benefit of increasing California’s progress towards achieving the goal of approving funding for infrastructure projects by December 31, 2015, that will provide broadband access to no less than 98 percent of households in California.”¹³ The stated goals of the Experiments, however, are “to explore how to structure the [Connect America Fund] Phase II competitive bidding process in price cap areas and to gather valuable information about interest in deploying next generation networks in high-cost areas.”¹⁴ While these goals may not always strictly overlap, the draft Resolution discusses the interrelated nature of the CASF and the FCC Experiment goals.¹⁵

¹² CAF R&O, *supra* note 1, at ¶ 22.

¹³ Draft Resolution, *supra* note 2, at 7, citing California P.U. Code § 281 (b)(1).

¹⁴ CAF R&O, *supra* note 1, at ¶ 22.

¹⁵ Draft Resolution, *supra* note 2, at 5.

ORA recommends that all matching grant-funded projects be listed on the CASF website that clearly identifies the name of the project, location, grantee name and the amount of CASF matching funds awarded.¹⁶ Transparency in this regard will allow ratepayers the opportunity to examine and become aware of such projects.

D. Clarification Needed on Previously Funded CASF Areas

The CASF program defines an “underserved area” as one in which “broadband is available, but no wireline or wireless facilities-based provider offers service at advertised speeds of at least 6 Mbps download and 1.5 Mbps upload.”¹⁷ With regards to speed of service thresholds, the FCC Experiments rules require that “[a]ll recipients of Experiments funding must offer, at a minimum, at least one standalone broadband service plan in excess of 4 Mbps downstream/1 Mbps upstream to all locations within the selected census blocks.”¹⁸ While ORA agrees with the hope that the Experiments thresholds represent bare minimum performance standards and recipients strive to offer increasingly fast service,¹⁹ the combination of these minimum requirements does leave a void. It appears possible for a FCC Experiments/CASF fund recipient to comply with applicable rules and yet have an area continued to be underserved by CASF standards. It is unclear, for example, whether the existence of a project funded by a CASF matching grant but which provides speeds less than 6 Mbps/1.5 Mbps would preclude CASF from funding another project in the same area within the first three years.²⁰ The Commission

¹⁶See Commission-Approved CASF Projects, <http://www.cpuc.ca.gov/PUC/Telco/Information+for+providing+/CASF/Default.htm>

¹⁷ CPUC Decision Implementing Broadband Grant and Revolving Loan Program Provisions, D.12-02.015, February 1, 2012, at § 3.4, Definitions of Undeserved [sic] Areas.

¹⁸ CAF R&O, *supra* note 1, at ¶ 25.

¹⁹ *Id.* at ¶¶ 25-28.

²⁰ “In areas where the Commission has already awarded a CASF grant, new CASF grant funding for broadband projects in the same area will be available only after 3 years from the start of broadband service of the first CASF – funded project in order to ensure that existing grantee(s) are able to realize returns on their investment.” CPUC D.12-02-015 Decision Implementing Broadband Grant and Revolving Loan Program Provisions, February 1, 2012, Appendix 1, at 2.

should address this possibility and explain how such projects would be handled to further the goals of CASF.

III. CONCLUSION

ORA recommends additional CASF oversight measures to confirm grant recipient compliance with FCC rules. These measures would ensure that the CPUC has and retains authority over grant recipients and safeguard ratepayers' contributions to the CASF programs. Transparency measures such as clearly listing matching grant recipients on the CASF website allow ratepayers the opportunity to become aware of and examine the projects in their vicinity. Clarification regarding the disparity between CASF and FCC Experiments minimum speed thresholds will further alleviate concerns regarding the expedited timeline and curtailed review process. ORA appreciates the opportunity to submit these recommendations on the draft Resolution.

Respectfully submitted,

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