

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Consider
Modifications to the California Advanced
Services Fund.

Rulemaking 12-10-012

REPLY COMMENTS OF THE CALIFORNIA CABLE & TELECOMMUNICATIONS ASSOCIATION

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The California Cable & Telecommunications Association (CCTA) hereby files its Reply Comments on the Phase I issues in the above-captioned proceeding pursuant to the February 14, 2018 Amended Scoping Memo and Ruling of Assigned Commissioner. In its Opening Comments, filed on March 16, 2018, CCTA conveyed its support in large part of the Staff Proposal regarding the Broadband Adoption Account, as well as the Staff Proposal for the Broadband Public Housing Account (BPHA). CCTA is further supportive of the comments made by other commenters to ensure adoption project grantees are held accountable for adoption results, including through partnerships with service providers to increase adoption. However, CCTA disagrees with certain commenters who advocate for the California Public Utilities Commission (Commission) to take actions that would violate state law, including funding broadband *service* with monies from the Broadband *Adoption* Account or removing the “unserved” criteria for BPHA grants. CCTA’s comments are detailed below.

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1. The opening comments make clear that adoption project grantees must take a data-driven approach to adoption results.

In its Opening Comments, CCTA urged the Commission to require an applicant to demonstrate measurable adoption outcomes as part of their project description.¹ However, certain commenters took a contrary view, arguing that the Commission should reject staff's proposal that applicants provide projected numbers of new residential broadband subscriptions resulting from their proposed adoption programs.² This proposal should be rejected by the Commission. In order to meaningfully assess which adoption projects to fund, the Commission needs to have information about the anticipated adoption success rate of the program in the application process.

Further, to verify the adoption outcomes of CASF-funded adoption projects, it is essential that CASF grantees be required to track and maintain accurate adoption numbers. Such measurement and accountability is necessary because the law requires the Commission to "provide a report to the Legislature that includes... (10) The number of subscriptions resulting from the broadband adoption program funded by the California Advanced Services Fund."³ Many commenters, including those which might be CASF broadband adoption grant applicants,

¹ See CCTA Opening Comments at 2. ("Accordingly, it is important for the Commission to require applicants to include in their project description their strategy for ensuring new residential broadband subscriptions (e.g., connecting participants with service providers or hosting broadband subscription sign-up events").

² See, e.g., North Bay North Coast Broadband Consortium (NBNCBC) Opening Comments at 3-4 ("Staff has proposed that as part of their project requirements, applicants provide a projected number of new residential broadband subscriptions resulting from the digital literacy or broadband access project. *We find this requirement unreasonable and recommend that it be removed.*")

³ Pub. Util. Code § 914.7.

support this approach and encourage the Commission to adopt rules which will require measurable adoption outcomes.⁴

However, certain commenters propose that the burden of assembling the adoption data for adoption projects should instead be placed on internet service providers.⁵ The Commission must reject these proposals and should adopt Staff’s proposal to require CASF grantees to gather data on their own about their broadband adoption “take rates.” This approach is not only fair (since the grantees are the ones receiving funding), but necessary given that it is the grantees that have access to (and presumably a relationship with) the individuals served by their adoption programs. ORA offers a good solution to this end: require the CASF grantee to have individuals served by programs to fill out a feedback form to gauge adoption, using the Commission’s Broadband Availability Public Feedback form.⁶

2. Proposals that ISPs be required to increase marketing efforts should be rejected—grantees receiving public funds must take the lead role in outreach efforts.

As made clear during the recent CASF workshops in Oroville and Madera, ISPs already have robust outreach programs; they promote their adoption programs through multiple channels, including radio, television, and publication advertisements, as well as community outreach. Nonetheless, well outside of the scope of this proceeding, some commenters propose that the Commission should require ISPs to increase media advertising and marketing of affordable offers to reach eligible households and increase adoption as part of the CASF

⁴ CETF Opening Comments at 3; CCBC Opening Comments at 2; TNDC Opening Comments at 3.

⁵ See, e.g., CSU-Chico Geographical Information Center (CSU-Chico) Opening Comments.

⁶ ORA Opening Comments at 12.

rules.⁷ The Commission must reject these proposals. As a threshold legal matter, the Commission cannot extend its CASF program rules to non-CASF participants, especially when the entities at question are largely outside the scope of the Commission’s jurisdiction.⁸ Instead, consistent with the established focus of Phase I of this docket,⁹ the CASF adoption rules should require grantees in the adoption program to undertake outreach as a condition of the funding grant. As comments by Gold Country Broadband Consortium (GCBC) appropriately state: “We agree with staff’s recommendation that the Commission fund...community outreach that will increase broadband access and adoption.”¹⁰

3. CCTA supports a provider-neutral approach to grantee partnerships

CCTA has previously stated that its members look forward to partnering with organizations that receive CASF funds for adoption projects. As such, CCTA agrees with the California Emerging Technology Fund (CETF) comments that state “[t]he Commission should encourage partnerships between grantees and incumbent Internet Service Providers (ISPs) to promote existing affordable broadband offers.”¹¹ Additionally, CCTA agrees with TURN’s comments that the Commission should “prohibit digital literacy projects from marketing or *exclusively* promoting any partnered carriers’ services without equal treatment for competitive carriers.”¹² However, CCTA disagrees with the TURN proposal that the Commission should

⁷ See, e.g., Gold Country at 1.

⁸ See Pub. Util. Code § 710

⁹ Amended Scoping Memo at 5 (“The purpose of this account is to increase adoption...Grants from this Account could be for digital literacy training programs and public education to communities with limited broadband adoption, including low-income communities, senior communities, and communities facing socioeconomic barriers to broadband adoption.”). Notably, there is no mention of ISPs in description of Phase I.

¹⁰ GCBC Opening Comments at 1.

¹¹ CETF Opening Comments at 3-4.

¹² TURN Opening Comments at 6. (Emphasis added)

review all partnership agreements between ISPs and the grantees.¹³ The imposition of such a requirement is unnecessary and could undermine grantee/ISP partnerships. As an initial matter, there has been no showing of improper exclusive marketing or promotions. Moreover, the imposition of additional regulatory hurdles (such as mandatory review of contracts) would likely disincentivize ISPs from entering into such partnership and, thus, negate the benefits. CCTA submits that a provider-neutral approach can be accomplished more efficiently through a rule prohibiting such exclusivity and a declaration confirming compliance with such a rule.

4. State law prohibits CASF funding service for grantees—instead grantees can look to the California Teleconnect Fund if funds are needed to subsidize the cost of service.

Public Utilities Code Section 281(j) clearly provides that “[m]oneys awarded pursuant to this subdivision [the adoption program] shall not be used to subsidize the costs of providing broadband service to households.”¹⁴ Despite the plain language of the statute, certain commenters propose that adoption funds should be diverted to provide broadband *service*.¹⁵ This would be a plain violation of the statute, and this proposal must be rejected. To the extent that a CASF adoption grantee seeks subsidies for service, it must look to other sources for such funding such as the Commission’s California Teleconnect Fund (CTF) (which is available to subsidize internet service for schools, libraries, hospitals and other non-profit organizations).

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¹³ TURN Opening Comments at 6.

¹⁴ Pub. Util. Code § 281(j)(6).

¹⁵ See, e.g., NBNCBC Opening Comments at 3 (“[F]unds should be available to purchase additional service for the applicant organization so that hosting such programs is feasible.”).

5. It would be unlawful and unwise to remove the “unserved” requirement for BPHA grants.

Although most of the comments submitted focused on the Adoption Program, a few parties, in addition to CCTA, submitted comments on the BPHA program. Most of the comments address the relatively minor changes that the Commission staff proposed to make in the existing rules or otherwise requested minor changes or clarifications of those rules.¹⁶ However, one commenter proposed a wholesale revision to those rules that must be rejected as inconsistent with the enabling statute. Specifically, the Satellite Affordable Housing Associates (SAHA) urges the Commission to adopt “an exception to the SB 745 requirement that applicants must be an “unserved” housing development...”¹⁷ Other commenters suggest that the Commission effectively wait to implement SB 745 until the conclusion of a Legislative stakeholder process.¹⁸ Regardless of any legislative efforts that may or may not occur in the future, the Commission must implement SB 745 as it stands today, including the explicit requirement that an applicant housing development must be completely unserved in order to be eligible. As a result, the Commission must limit BPHA money to “unserved” housing developments and cannot adopt exceptions to the statute. This result is not only legally compelled, it also serves the public interest because it ensures that funds are directed where most needed instead of providing funds in locations in which service is already available.

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¹⁶ See, e.g. CCTA Opening Comments at 4; TNDC Opening Comments at 4-5.

¹⁷ Satellite Affordable Housing Associates (SAHA) Opening Comments at 2

¹⁸ TNDC Opening Comments at 4; CETF Opening Comments at 5.

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Respectfully submitted,

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