

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



FILED
03/16/18
04:59 PM

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

Rulemaking 12-10-012
(Filed October 25, 2012)

**COMMENTS OF THE OFFICE OF RATEPAYER ADVOCATES ON THE
AMENDED SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER
REQUESTING COMMENTS ON THE IMPLEMENTATION OF PROGRAM
CHANGES TO THE CALIFORNIA ADVANCED SERVICES FUND**

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I. INTRODUCTION

Pursuant to the February 14, 2018 *Amended Scoping Memo and Ruling of Assigned Commissioner* (“Scoping Memo”) in Rulemaking 12-10-012 setting forth implementation of program changes to the California Advanced Services Fund (“CASF”), the Office of Ratepayer Advocates (“ORA”) submits the following comments.

The Scoping Memo requests interested parties file comments on the scope of the proceeding and on the “Phase I Staff Proposals” presented in Appendix B. The Phase I Staff Proposals contains questions and proposals from Communication Division Staff on the application requirements, guidelines and other issues concerning the implementation of the Broadband Adoption Account and changes to the Public Housing Account and Loan Account, as required under Assembly Bill (“AB”) 1655. ORA’s comments focus specifically on the Staff Proposal implementing the Broadband Adoption Account. AB 1655 created the Broadband Adoption Account to:

increase publicly available or after-school broadband access and digital inclusion, such as grants 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.¹

II. DISCUSSION

The California Public Utilities Commission (“Commission”) must ensure that the CASF achieves its statutory mandates by carefully crafting program rules and processes to guarantee ratepayer funds support only eligible projects and benefit the intended recipients. In the case of the Broadband Adoption Account, the funds should benefit communities with low broadband access and limited broadband adoption, including low-income and disadvantaged communities.² In order to achieve these goals, the Commission should develop stringent eligibility requirements and provide the program’s administrators with the tools to ensure CASF funds benefit the communities intended by

¹ Public Utilities Code § 281(j)(1).

² *Ibid.*

the Legislature. In addition, the Commission must hold grant recipients accountable for the prudent use of ratepayer funds to safeguard against waste, fraud, and abuse. The comments below include suggestions for the Commission to consider in its efforts to achieve these outcomes.

A. The Commission Should Adopt a Goal for the Broadband Adoption Account to Facilitate Increased Broadband Access and Adoption.

The Scoping Memo identifies that the Commission must determine the goal of the Broadband Adoption Account.³ The Phase 1 Staff Proposal recognizes that, “Moneys in the Broadband Adoption Account are available to the Commission to award grants to increase publicly available or after-school broadband access and digital inclusion,” but does not propose a specific goal.⁴

The Commission could consider tying the goal of the Broadband Adoption Account to the overarching goal of the CASF program, which is to provide funding for infrastructure projects to achieve broadband access to 98 percent of California households in each consortia region by December 31, 2022.⁵ To do this, the Commission could adopt rules for the Broadband Adoption Account to prioritize funding to communities in consortia regions which have not yet met the 98 percent access goal. Thus, the Broadband Adoption Account will facilitate increased broadband access. This approach will allow the Commission to prioritize funding from the Broadband Adoption Account to areas of the state that demonstrate the most significant hurdle to broadband adoption – the absence of available broadband services.

Alternatively, if the Commission seeks to prioritize funding in areas with low broadband adoption irrespective of the level of broadband access (availability), the Commission can compare adoption rates for various demographic subsets to determine an appropriate adoption goal. Figure 1 and Figure 2 below depict the national and California

³ Scoping Memo at p. 5-6.

⁴ Scoping Memo, Appendix B at p. 2.

⁵ Public Utilities Code § 281(b)(1)(A).

adoption rates found among subsets of the following demographics: age, race, income, education, ability, and community.

**FIGURE 1
NATIONAL HOME ADOPTION RATES PER DEMOGRAPHIC⁶**

	Lowest Adoption Rates		Highest Adoption Rates	
	Subset	Percentage	Subset	Percentage
Age	65+ Years	51%	30-49 Years	81%
Race	Hispanic	58%	White	78%
Income	< \$30k	53%	> \$75k	93%
Education	Some High School	34%	College Grad	91%
Community ⁷	Rural	63%	Suburban	76%
Average		57%		84%

**FIGURE 2
CALIFORNIA HOME ADOPTION RATES PER DEMOGRAPHIC⁸**

	Lowest Adoption Rates		Highest Adoption Rates	
	Subset	Percentage	Subset	Percentage
Age	65+ Years	60%	18-29 Years	78%
Race	Spanish-Speaking Latino	33%	White Non-Hispanic	83%
Income	< \$20k	48%	> \$100k	90%
Education	Not a High School Graduate	39%	College Grad	87%
Ability	Disabled	60%	Not Disabled	72%
Average		48%		82%

Giving equal weight to each of the five demographics listed above and noting the subset within each category with the lowest and highest adoption rate suggests disadvantaged communities experience adoption rates of around 57 percent nationwide and 48 percent in California. Meanwhile, non-disadvantaged communities experience adoption rates of around 84 percent nationwide and 82 percent in California. For additional context, at the end of 2016, 73 percent of all adults nationwide subscribed to

⁶ Pew Research Center, Internet/Broadband Fact Sheet, <http://www.pewinternet.org/fact-sheet/internet-broadband/>.

⁷ The statistics from the Pew Research Center defines the category of “Community” as including urban, suburban, and rural subcategories.

⁸ http://www.cetfund.org/files/002_CETF_2017_002_IGS_Poll_CA_Digital_Divide.pdf

broadband at home.⁹ However, California’s adoption rate is higher than the national average; the Phase 1 Staff Proposal notes that California had an overall adoption rate of 84 percent as of July 2016, according to the annual survey conducted for the California Emerging Technology Fund (“CETF”).¹⁰

Taking this data into consideration and incorporating the CASF’s new focus on broadband access within each consortia region, a reasonable goal for the Broadband Adoption Account is to reach an adoption rate of at least 73 percent for each consortia region. This goal equates to the national average adoption rate, and is slightly more than the midpoint between the averages of the lowest and highest adoption rates for the demographic subsets listed in Figure 1 and Figure 2.

To assess the adoption rates within each consortia region, the Commission can utilize broadband deployment and subscription data submitted by broadband service providers to the Federal Communications Commission (“FCC”) in biannual “Form 477” filings. The Commission’s *California Interactive Broadband Map* also contains information on adoption rates per census tract, but excludes the statistics for many tracts throughout the state to protect confidentiality of individual service providers. Nonetheless, the publically available information on the map demonstrates the wide range of adoption rates between census tracts and provides some insight into the areas that stand to benefit the most from the Broadband Adoption Account.

B. Public Utilities Code § 281 Requires that the Commission Give Preference to Broadband Adoption Account Projects that Serve Communities with Low Broadband Access.

The Phase 1 Staff Proposal defines communities with “low broadband access” as communities or areas having low broadband subscription rates relative to the statewide average and/or communities facing socioeconomic barriers to broadband and adoption. However, AB 1665 revised Public Utilities Code § 281 to include: “The commission

⁹ Pew Research Center, Internet/Broadband Fact Sheet, <http://www.pewinternet.org/fact-sheet/internet-broadband/>.

¹⁰ California Emerging Technology Fund, Broadband Internet Connectivity and the Digital Divide in California - 2017, http://www.cetfund.org/files/002_CETF_2017_002_IGS_Poll_CA_Digital_Divide.pdf

shall give preference to programs in communities with demonstrated low broadband access...”¹¹ As used elsewhere in the statute, “access” has meant availability.¹² Therefore, the Commission should define “low broadband access” according to the percentage of households with access (or availability) to safe and reliable broadband services and not solely according to subscription rates. The Commission should also give preference to programs in communities with low broadband subscription rates, as proposed in the Phase 1 Staff Proposal, but only after giving preference to programs that serve communities with low broadband access.

Interpreting the legislation as requiring the Commission to give preference to programs in communities with low broadband access (as opposed to solely low subscription rates) is reasonable in light of the separate mandate that moneys awarded from the Broadband Adoption Account do not subsidize the costs of providing broadband service to households.¹³ Access and cost are the primary factors affecting broadband subscription rates.¹⁴ If the funds are not intended to subsidize the cost of providing broadband access to households, then granting funds which prioritize communities with low broadband access is an appropriate tactic to address low subscription rates. When combined with support from the Infrastructure Account, which also targets areas with low broadband access, this approach maximizes CASF benefits to areas which are most in need. Therefore, the Commission should augment the Phase 1 Staff Proposal definition

¹¹ Public Utilities Code § 281(j)(5).

¹² Public Utilities Code §§ 282(b)(2)(A), 281 (f)(5)(A).

¹³ Public Utilities Code § 281(j)(6).

¹⁴ John Horrigan and Maeve Duggan. “Home Broadband 2015.” Pew Research Center, 2015.

of “low broadband access” to include communities where households lack access to safe and reliable broadband services at speeds of 10 Mbps downstream and 1 Mbps upstream.¹⁵

The Commission should consider the eligibility criteria of the CASF Infrastructure Account to identify communities that lack access to safe and reliable broadband services. For example, under the Infrastructure account, Public Utilities Code Section § 281 requires eligible projects to deploy infrastructure capable of providing broadband access at speeds of a minimum of 10 Mbps downstream and 1 Mbps upstream.¹⁶ In administering the Broadband Adoption account, the Commission should define communities with “low broadband access” as communities in which households lack access to broadband service (from a facilities-based provider) at speeds of at least 10 Mbps downstream and 1 Mbps upstream. This approach will allow the Commission to focus the available resources of the Broadband Adoption account on the areas and communities that need it most.

The Commission can utilize its Broadband Availability Map¹⁷ and/or the FCC Form 477 data to determine if an adoption program will serve a community where households lack access to broadband service at speeds of at least 10 Mbps downstream and 1 Mbps upstream. The Commission should define “community” to include geographical boundaries or particular locations, and not exclusively the “class or category of people.” This approach will allow the Commission to assess the communities the applicant proposes to serve in a similar manner as it currently does for applicants to the Infrastructure Account – albeit against a different qualifying threshold of “broadband

¹⁵ To the extent the Commission adopts a goal for the Broadband Adoption Account to facilitate increased broadband access by prioritizing funding to communities in consortia regions which have not yet met the 98% access goal, priority funding to communities lacking access to broadband service at speeds of 10 Mbps downstream and 1 Mbps upstream should be in consortia regions that have not yet met the 98% access goal.

¹⁶ Public Utilities Code § 281(f)(5)(A).

¹⁷ Available at <http://www.broadbandmap.ca.gov/>.

access.”¹⁸ After giving priority to projects that serve communities with low broadband access, the Commission should also assess the subscription rates of communities to determine whether a project is eligible or to rank eligible programs by subscription rates.

Communities with broadband access at speeds of at least 10 Mbps downstream and 1 Mbps upstream can still demonstrate low levels of broadband adoption. To identify these communities, a definition of “community” that incorporates the “class or category of people” is appropriate. Public Utilities Code § 281 explicitly identifies some classes/categories of people in providing examples of eligible projects:

Moneys in the Broadband Adoption Account shall be available to the commission to award grants to increase publicly available or after-school broadband access and digital inclusion, such as grants 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.*¹⁹

As stated above, the Commission should prioritize funding projects that serve a geographical region with “low broadband access” wherein households lack access to broadband service at speeds of at least 10 Mbps downstream and 1 Mbps upstream. Then, to address communities with adequate broadband access but low broadband adoption, the Commission can give further preference to projects that serve classes or categories of people with low broadband adoption rates.

C. For-Profit Organizations Should Not Be Eligible for Grants from the Broadband Adoption Account.

Public Utilities Code § 281(j)(2) identifies the following as eligible applicants for the Broadband Adoption Account: local governments, senior centers, schools, public libraries, nonprofit organizations, and community-based organizations. The Commission

¹⁸ Public Utilities Code § 281(f)(5)(A) requires the Commission award grants from the Infrastructure Account to projects that will deploy infrastructure capable of providing broadband access to unserved households in census blocks where no provider offers access at speeds of at least 6 Mbps downstream and 1 Mbps upstream. In contrast, for the Broadband Adoption Account the Commission should require eligible projects to serve communities in which households lack access to broadband service at speeds of at least 10 Mbps downstream and 1 Mbps upstream.

¹⁹ Emphasis added. Public Utilities Code § 281(j)(1).

should exclude for-profit entities. As currently written, the proposal would allow for-profit schools and senior centers.

Disallowing funding to for-profit entities will assist the Commission ensure that a funded project does not charge for classes supported by the Broadband Adoption Account or make a profit of any kind from granted funds, consistent with the proposed rules.²⁰ These provisions in the staff proposal are reasonable but insufficient to ensure that all funds benefit the intended communities and do not enrich a for-profit organization. The Commission does not have the resources to guarantee that a for-profit organization does not directly or indirectly profit from granted funds. In addition, the Broadband Adoption Account should not benefit a for-profit entity to the detriment of competing businesses, organizations, or institutions. Therefore, the Commission should include an explicit prohibition on for-profit entities applying for or receiving support from the Broadband Adoption Account.

D. The Broadband Adoption Account Should Not Support Educational Efforts and Materials That Are Not Focused Exclusively on Digital Literacy and/or Broadband Adoption.

Public Utilities Code § 281(j)(1) states that the Commission will award Broadband Adoption Account grants to projects that increase broadband access and digital inclusion. The section requires that projects that increase broadband access provide publicly available or after-school broadband access. The section also identifies “digital literacy training programs” and “public education to communities with limited broadband adoption” as examples of digital inclusion projects eligible for support from the Broadband Adoption Account. The Phase 1 Staff Proposal therefore outlines proposal requirements for “Digital Literacy Projects” and “Broadband Access Projects.”

The Phase 1 Staff Proposal proposes that costs related to “education and outreach efforts and materials” are eligible for reimbursement from the Broadband Adoption Account. The Commission should specify that eligible “educational efforts and

²⁰ Scoping Memo, Appendix B, p. 3.

materials” must exclusively focus on digital literacy and/or broadband adoption. This requirement is necessary to ensure that eligible projects will seek to achieve the goal of the CASF to facilitate the availability and adoption of safe and reliable broadband services. If the Commission does not implement a rule to ensure eligible educational projects focus exclusively on digital literacy and/or broadband adoption, it could result in applicants improperly obtaining funds for “public education” on unrelated subject matter that may not advance the goals of the CASF program.

In crafting rules for the new Broadband Adoption Account, the Commission should heed the lessons learned during its review of the California Teleconnect Fund (“CTF”), especially concerning educational instruction provided by community based organizations. Similar to the Broadband Adoption Account, the CTF is a public purpose program administered by the Commission. The CTF and the Broadband Adoption Account have similar goals related to bridging the “digital divide” and increasing the availability and adoption of advanced communication services, i.e. broadband. Both programs provide (or will provide) support to eligible entities, such as community based organizations, for activities related to educational instruction. During a recent review of the CTF program, the Commission found:

While it is clear that CBO’s [community based organizations] were intended to be eligible to participate, current rules do not provide staff with sufficient, clear guidance on how to make eligibility determinations consistent with the overall goals of the CTF program ... [and] CD Staff and the parties all agreed that further defining ‘educational instruction’ was necessary for appropriate rules governing CBO eligibility for entities that provide qualifying services. Lack of precision in the rules for this area has led to inclusion of organizations with missions providing services that are only tenuously related to CTF goals.²¹

While the CTF and the Broadband Adoption Account will support different types of educational instruction, the need to clearly define the eligible subject matter remains

²¹ Decision 15-07-007 at p. 22-23.

consistent. The goal of the Broadband Adoption Account should focus only on access to, and adoption of, broadband services. Therefore, it is reasonable for the Commission to clearly define eligible “educational efforts and materials” as instruction focused exclusively on digital literacy and/or broadband adoption.

E. The Broadband Adoption Account’s Eligibility Criteria Should Include Verifiable Demonstrations of Program Necessity, the Applicant’s Ability/Capacity, Community Support and Collaboration, and Financial Feasibility.

The Phase 1 Staff Proposal includes a point system for evaluating Digital Literacy Projects and Broadband Access Projects based on predefined criteria, including: project need, number of participants, type of training, funding request per participant, and other factors. These criteria are important aspects of any application, but primarily consist of projections and general project descriptions, which an applicant can easily exaggerate, manipulate, or otherwise misrepresent. Furthermore, these criteria are difficult to verify during the application-scoring process and inaccuracies are likely to go undetected and unchallenged. The Commission should adopt additional evaluation criteria that include verifiable demonstrations of program necessity, the applicant’s ability/capacity, community support and collaboration, and financial feasibility. For example, the Commission should consider the following additional evaluation criteria:

- Program Necessity
 - Statistics and other information on the project location and target community. All data should include citations to trustworthy sources (e.g. U.S. Census Bureau, California Interactive Broadband Map, reputable non-profit organizations, government offices/agencies, universities, or published academic studies) or gathered via appropriate methods with sufficient documentation (e.g. community surveys with signatures and addresses).
- Ability & Capacity
 - Verifiable demonstrations of expertise and ability, including resumes, details on other successful projects, and other secured grants or funding sources.

- A robust and detailed plan to collect project outcome data and evaluate the impact of the project. The Commission should periodically evaluate the impact of the project on broadband adoption levels in the community. (Refer to Section F, below, for additional information and recommendations on this item.)
- Community Support & Collaboration
 - Letters of support from third-party community leaders/organizations, along with the contact information necessary for staff to verify for authenticity.
 - Agreements to collaborate with other organizations within the community.
- Financial Feasibility
 - The applicant’s ability to contribute the minimum required matching funds. (An applicant that submits proof of readily available funds should receive more “points” in this category compared to an applicant that plans to apply for additional grants from other various programs.)
 - Demonstrations that the entity is able to cover costs/expenses for the space being utilized and program stability (e.g. notice of intent to occupy a space, commitments from volunteers, and availability of resources).
 - The level of support (as percentage of total project budget) requested.
 - Documentation of all other sources of funds, grants, discounts, or any other support for the project, including from other public purpose programs, including the CTF program.

F. The Commission Should Use and Enhance Its Existing Resources to Ensure Program Effectiveness Is Measurable.²²

Public Utilities Code § 914.7(a)(7) requires the Commission to provide to the legislature “the number of subscriptions resulting from the broadband adoption program

²² This Section responds to the Staff Proposals’ specific questions in Appendix B, p. 10-11: How can the Commission gather metrics on the program’s results? How should the Commission quantify or report on the actual broadband adoption levels from funds expended from the CASF in the prior year? How should the Commission gather and report the number of subscriptions resulting from the Broadband Adoption Account? How can grantees help track performance metrics for the program?

funded by the California Advanced Services Fund.” The Commission already has a means for collecting feedback from the public about broadband availability, adoption, and quality. The feedback form is accessible from Commission’s website,²³ and may also be submitted through the Interactive Broadband Map. This form (on its own or with minor revisions) can be used to verify a community’s level of broadband access and adoption as well as to evaluate the fund’s overall effectiveness.

As part of their application, the Commission could require applicants to ensure the community members they seek to serve complete the feedback form, which would help applicants demonstrate their community’s need for broadband. Sometime after the completion of the program, applicants (or the Commission) could ask community members to re-submit the form; comparing pre-program and post-program responses for the same group of individuals would enable applicants to calculate whether and by how much their program increased broadband adoption in their community.

G. Additional Recommendations on the Eligibility Requirements of the Broadband Adoption Account.

ORA recommends two additional changes to the eligibility requirements of the Broadband Adoption Account to ensure moneys from the Broadband Adoption Account benefit communities in need. First, the Phase 1 Staff Proposal should abandon the “and/or” part of the definition of “communities with demonstrated low broadband access,” which, as written, allows the Commission to give preference to projects in communities that demonstrate *either* low broadband subscription rates *or* that face “socioeconomic barriers to broadband and adoption.” As a result, priority funding could theoretically go to communities with both high broadband access and subscription rates, as long as the applicant can demonstrate the community experiences “socioeconomic barriers to adoption,” even if that barrier does not actually result in low broadband access or adoption in their community.

²³ Commission, Broadband Availability Public Feedback, http://www.cpuc.ca.gov/Broadband_Availability_and_Public_Feedback/

Second, the Commission should further refine how it assesses the appropriate income threshold to identify low-income communities. The Phase 1 Staff Proposal defines a low-income community as “communities with a median household-income below the threshold set by the Commission for a family of four in the California Alternate Rates for Energy (“CARE”) program.”²⁴ As of February 2018, this threshold for a family of four is \$49,200.²⁵ Using median household income for a family of four as the sole standard to demonstrate low-income status does not allow applicants to account for regional variation in household size or cost of living. Since this income threshold applies to a family of four,²⁶ it is not an appropriate metric for communities with significant numbers of single occupancy households or households with five or more people.²⁷ In contrast, the CARE program sets a range of income thresholds based on household size to determine eligibility.²⁸

Moreover, because the cost of living in California varies so widely, an income of \$49,200 could be considered low-income in some areas, but not in others. Additionally, according to the CETF report, the broadband adoption rate for people making between \$40,000 and \$59,999 actually exceeds the statewide average, with a 79 percent adoption rate, compared to 69 percent for all income levels.²⁹ Although publicly available data are not available to determine whether California households earning between \$40,000 and the CARE income threshold (\$49,200) have low adoption rates, it is clear that households earning less than \$40,000 have low adoption rates. To better identify an appropriate income threshold to correlate low-income communities with low broadband adoption

²⁴ Scoping Memo, Appendix B at p. 3.

²⁵ *Ibid.*

²⁶ Also, the Commission’s use of the word “family” in the definition is potentially confusing, since the ACS makes a distinction between family and non-family households. The Commission should specify “household of 4” not “family of 4.”

²⁷ According to the American Community Survey, 14 percent of California households contain five or more people and 24 percent contain just one person.

²⁸ Commission, CARE/ FERA Programs, <http://www.epuc.ca.gov/General.aspx?id=976>.

²⁹ California Emerging Technology Fund , Broadband Internet Connectivity and the Digital Divide in California - 2017, http://www.cetfund.org/files/002_CETF_2017_002_IGS_Poll_CA_Digital_Divide.pdf

rates, the Commission should use the data it has collected through the Broadband Interactive Map. A simple linear regression would enable the Commission to evaluate how much of the variation in adoption rates can be explained by the median household income for that census block. This analysis would then enable the Commission to determine what income threshold is correlated with a broadband adoption rate that is less than the statewide average. This analysis could be done for each consortia region, allowing the Commission to set region-specific income level thresholds.

Lastly, the Phase 1 Staff Proposal requires applicants to submit income information specific to the community they are serving. While this may be an easy task for applicants whose community represents a census tract, block, or block group, it would be more difficult for applicants whose community is defined on a smaller scale and whose demographics differ from the surrounding area.

Therefore, the Commission should consider conducting additional analyses to estimate what is actually an appropriate income threshold or consider allowing applicants to demonstrate low-income status in other ways besides simply demonstrating that the income level in their project area is under \$49,200.

III. CONCLUSION

The Commission must ensure that the CASF achieves its statutory mandates by carefully crafting program rules and processes to guarantee ratepayer funds support only eligible projects and benefit the intended recipients. For the Broadband Adoption Account, the Commission should adopt a specific programmatic goal to guide its efforts and act as a benchmark to assess the performance of the grantees. The Commission should give preference to Broadband Adoption Account projects that serve communities with low broadband access and also take into account whether a project serves a community with low broadband adoption rates. The Broadband Adoption Account should

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neither support for-profit organizations nor education efforts and materials that are not focused exclusively on digital literacy and/or broadband adoption. Finally, the eligibility criteria for the Broadband Adoption Account should include verifiable demonstrations of program necessity, the applicant's ability/capacity and financial feasibility, and community support and collaboration.

Respectfully submitted,

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March 16, 2018