

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

**COMMENTS OF THE OFFICE OF RATEPAYER ADVOCATES ON THE
PROPOSED DECISION IMPLEMENTING THE CALIFORNIA ADVANCED
SERVICES FUND BROADBAND ADOPTION, PUBLIC HOUSING AND LOAN
ACCOUNTS PROVISIONS**

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I. INTRODUCTION

Pursuant to Rule 14.3 of the Commission’s Rules of Practice and Procedure, the Office of Ratepayer Advocates (“ORA”) submits the following comments on the May 18, 2018 *Proposed Decision Implementing The California Advanced Services Fund Broadband Adoption, Public Housing And Loan Accounts Provisions* (“Proposed Decision”) in Rulemaking 12-10-012 proposing changes to the California Advanced Services Fund (“CASF”).

First, the Commission should not redefine “low broadband access” to administer the Adoption Account. “Broadband access” is a commonly understood industry phrase with an established meaning. Changing the definition, especially when restricted to a small subset of the CASF program, potentially introduces a source of confusion. Moreover, the Commission has no need to redefine the term as the Proposed Decision does not rely on it to prioritize applications, and the Commission already has the authority to choose to prioritize areas with low broadband adoption. In addition, the Proposed Decision should reference the most recent estimate of the rate of broadband adoption in California, and this estimate should not include California households that only have access to broadband through a mobile device. The Proposed Decision should also clarify how the Commission will assess the effectiveness of the adoption strategy

and the demand for adoption funds during the pilot phase. Lastly, the Proposed Decision should be explicit that for-profit organizations are not eligible for Adoption Account funds and that proposals may not favor any particular Internet Service Provider (“ISP”).

II. DISCUSSION

A. **The Commission should not create a definition of “low broadband access” that only applies to the Adoption Account.**

When awarding Adoption Account funds, Public Utilities Code § 281 requires the Commission to give preference to programs in communities with “demonstrated low broadband access”.¹ The Proposed Decision applies this requirement by redefining the meaning of “low broadband access” *only* as it is used in the Adoption Account.² On page 2 of Appendix 1, of the Proposed Decision, it states “[c]ommunities with demonstrated ‘low broadband access’ for the Adoption Account are defined as communities or areas having low broadband subscription rates (a.k.a., low broadband adoption) relative to the statewide average.” However, in defining the goal of the CASF program, Public Utilities Code §281 uses the phrase “broadband access” as a measure of service availability, not adoption.³ Creating a new definition for a term with a well-established meaning is both unnecessary and confusing.

First and foremost, the Commission does not need to redefine the phrase “low broadband access” to prioritize proposals to receive funding under the Adoption Account. While Public Utilities Code Section 281 directs the Commission to give preference “to programs in communities with demonstrated low broadband access,” it also gives the Commission broad authority to determine how to prioritize funding, stating “the Commission shall determine how best to prioritize projects for funding pursuant to this paragraph.”⁴ Furthermore, Public Utilities Code Section 281 already requires funds in the

¹ Pub. Util. Code § 281 (j)(5).

² Proposed Decision at pp. 14-15, 36, and Appendix 1 at pp. 1-2.

³ Pub. Util. Code § 281 (b)(1)(A).

⁴ Pub. Util. Code § 281 (j)(5).

Broadband Adoption Account to go to communities with low broadband adoption; Public Utilities Code Section 281(j)(1) states, “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...*to communities with limited broadband adoption*, including low-income communities, senior communities, and *communities facing socioeconomic barriers to broadband adoption*” (emphasis added). Therefore, the Commission does not need to redefine “broadband access” in order to prioritize areas with low broadband adoption – the statute already requires Adoption Account funds to go to areas with low broadband adoption.

As a practical matter, the Proposed Decision does not use the revised definition to prioritize projects for funding. In order to qualify for prioritization, proposals need to submit the “Preference Checklist” and the Commission will prioritize projects based on the number of preferences checked.⁵⁶ The list of preferences include:

- projects serving low-income communities;
- projects serving a community with limited English proficiency;
- projects serving a community with limited educational attainment;
- projects serving a rural community;
- projects having community support, endorsements and/or partnerships;
- projects that offer Internet access at low or no cost to the user;
- projects serving a community with some other demonstrated disadvantage which affects broadband adoption as documented by applicant; and
- projects considering coordination with other public purpose programs and funding sources.⁷

⁵ Pub. Util. Code § 281(j)(1).

⁶ Proposed Decision, Appendix 1 at p. 2.

⁷ Proposed Decision at p. 36 and Attachment 1.C.

While the Preference Checklist includes an item that prioritizes “projects serving a community with some other demonstrated disadvantage which affects broadband adoption as documented by applicant,” this item is sufficient as-written to prioritize funding for areas with low broadband adoption.⁸ Therefore, it would appear that a redefinition of the phrase “low broadband access” is not necessary.

Lastly, since both “access” and “adoption” are common industry terms with well-established meanings,² redefining “low broadband access” would create a potential source of confusion for CASF program participants, particularly because the redefinition only applies to the Adoption Account. Therefore, the Commission should continue to define “low broadband access” in terms of the percentage of households where service is available.

B. The Proposed Decision should reference the most recent estimate of the rate of broadband adoption in California.

In several places, the Proposed Decision references the annual survey, published by the California Emerging Technology Fund (CETF), which tracks the rate of broadband deployment adoption in California.¹⁰ These references point to study results published in 2016; however, CETF has since published another version of this annual survey, and, therefore, the figures cited in the Proposed Decision are outdated.¹¹ The Commission should replace any references to the survey results published in 2016 with the results published in 2017.

⁸ Here we are using the Commission’s definition of “low broadband access,” meaning “low broadband adoption.”

² While there are countless documents that could be cited here, two relevant examples include NTIA’s 2013 Broadband Adoption Toolkit (referenced in the Proposed Decision) and the Commission’s California Broadband Reports.

¹⁰ Proposed Decision at pp. 9, 10, and Appendix 1 at p. 2.

¹¹ California Emerging Technology Fund, Broadband Internet Connectivity and the Digital Divide in California - 2017, <http://www.cetfund.org/progress/annualsurvey>.

C. The Proposed Decision should not include mobile wireless connections in its assessment of broadband adoption rates.

In citing CETF’s 2016 report, the Proposed Decision states that an estimated 84% of California households have broadband access at home. However, this figure includes 14% of households that *only* have home broadband access through a smartphone; in 2016, 70% of California households had at-home broadband access through a computing device.¹² The Commission believes,¹³ and ORA agrees, that mobile broadband is a compliment to fixed broadband, not a substitute. Therefore, the Proposed Decision should assess broadband adoption rates using a statistic that excludes smartphone-only broadband access; in 2017, CETF estimated this figure was 69%.¹⁴

D. The Proposed Decision should explicitly state how the effectiveness of the Adoption strategy and the demand for adoption funds will be assessed during the pilot phase.

The Proposed Decision indicates that the Commission will award \$5 million (of the total \$20 million in the Adoption Account) within the first six months after the Account begins accepting applications on July 1, 2018.¹⁵ This money is intended as a pilot that will help the Commission “determine the effectiveness of the Adoption strategy and assess demand for adoption funds.”¹⁶ With the Commission proposing to award 25% of the total funds during the first of nine application windows,¹⁷ this is a very large pilot program. Evaluating whether the Adoption Account strategy is effective will be much easier if staff track issues pertinent to that evaluation concurrently with the application

¹² As defined in the survey results, “computing devices” include a desktop, laptop, or tablet computer.

¹³ Proposed Decision at p. 18.

¹⁴ California Emerging Technology Fund, Broadband Internet Connectivity and the Digital Divide in California - 2017, <http://www.cetfund.org/progress/annualsurvey>.

¹⁵ Proposed Decision at pp. 12, 35, and Appendix 1 at p. 1.

¹⁶ Proposed Decision at pp. 12, 35.

¹⁷ According to the Application Requirements and Guidelines, Commission staff “will consider applications submitted on or before each deadline listed below as a batch, until all funds have been awarded” (Proposed Decision, Appendix 1 at p. 11). The deadlines fall on January 1st and July 1st, from July 1st 2018 through July 1st 2022.

review process, rather than waiting until after. Therefore, it is important that the Commission draft and implement an evaluation strategy before accepting applications.

The following list includes examples of questions the Commission could use to help evaluate and improve the strategy to review and award CASF Broadband Adoption Account funds:

- What were the most common errors in the applications received and what can the Commission do to prevent these errors in future applications?
- What are the gaps in the types of broadband adoption proposals being submitted? Is there geographical diversity? How can the Commission encourage more diversity in project applications, where such diversity is lacking?
- How many broadband adoption proposals were submitted versus how many were ultimately approved? For the proposals that were rejected, what were the most common reasons?
- How many broadband adoption proposals were prioritized for funding compared to the number submitted?
- What percentage of funded broadband adoption proposals were ultimately expedited? Did a high percentage of expedited projects also meet the criteria for prioritization? If not, how can the Commission ensure projects that meet the requirements for prioritization receive funding before expedited projects?

This is just a short list of examples of potential questions the Commission could use to evaluate the CASF broadband adoption account proposal review process. The Commission should produce the evaluation it will utilize in advance of opening the first window for proposal review.

E. The Proposed Decision should be explicit that for-profit organizations are not eligible for Adoption Account funds.

During opening comments, ORA recommended that the Commission preclude for-profit entities from receiving Adoption Account funds.¹⁸ Although the Proposed Decision does not explicitly agree or disagree with this recommendation, the Commission responds that “we believe Appendix 1 as written does not allow for profit organizations to apply.”¹⁹ However, Appendix 1 as written is not clear on this front.

Section 1.4 of Appendix A lists the types of applicants eligible for Adoption Account funds; these include local governments, senior centers, schools, public libraries, nonprofit organizations, and community-based organizations.²⁰ Some of these types of eligible applicants could be for-profit entities that would be eligible for funding under the Commission’s existing guidelines. While Section 1.4 clarifies that grant recipients may not make a profit off the funds received through the Adoption Account, this is not sufficient to preclude for-profit entities from receiving funds. If the Commission agrees that for-profit entities should be precluded from receiving funds from the Adoption Account, the Commission should state so explicitly, in light of these ambiguities.

F. The Proposed Decision must preclude projects from favoring any particular Internet service provider (“ISP”).

The Proposed Decision encourages applicants to coordinate and partner with local broadband carriers.²¹ While there is utility of such partnerships, the Commission should not use the Adoption Account to favor any carrier over another. The Proposed Decision acknowledges that both The Utility Reform Network (“TURN”) and CETF raised this same concern in opening comments; however, the Commission does not respond to the concern. Instead, the discussion simply states that the Commission has added

¹⁸ ORA Opening Comments at pp. 7-8.

¹⁹ Proposed Decision at p. 16.

²⁰ Proposed Decision, Appendix 1 at p. 3.

²¹ Proposed Decision at pp. 13, 16, 22, 24, 28, 29, and 36-38.

partnerships with other organizations (including ISPs) to the list of proposal requirements.²²

ORA echoes the concern raised by TURN and CETF and urges the Commission to modify the Adoption Account requirements so that funded projects are precluded from favoring a particular ISP. This can be accomplished in a few ways. First, when project applicants indicate they have established a partnership with a local ISP, the Commission should explicitly require the applicant to name all the ISPs that provide services in their community and then certify that all have been provided the same invitation to participate in the program. Also, proposals to host plan sign up events for potential subscribers in collaboration with ISPs should include a certification that they have invited all local ISPs to participate in the event.²³ Lastly, the Commission should require Digital Literacy proposals seeking expedited review to include *all* available broadband Internet services when performing the requisite education and outreach to the community about available broadband Internet services.

III. CONCLUSION

The Commission should not redefine “low broadband access” to administer the Adoption Account. Not only is this confusing since the phrase already has a well-established meaning, the Commission has no need to redefine this term because the Proposed Decision does not rely on it to prioritize applications. Moreover, the Commission already has the authority to prioritize areas with low broadband adoption, if it chooses to do so, without any redefinition of terms. In addition, the Proposed Decision should reference the most recent estimate of the rate of broadband adoption in California, and this estimate should not include California households that only have access to broadband through a mobile device. The Commission should also, in advance of opening the first application window for proposal review, produce the evaluation it will use to assess the effectiveness of the adoption strategy and the demand for adoption funds

²² Proposed Decision at pp. 22, 37.

²³ Proposed Decision, Appendix 1 at p. 8.

during the pilot phase. Lastly, the Proposed Decision should be explicit that for-profit organizations are not eligible for Adoption Account funds and that proposals must not favor any particular ISP.

Respectfully submitted,

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Appendix A

**(Proposed changes to the *Findings of Fact*
and *Conclusions of Law* (additions
underlined, deletions in strikethrough))**

Appendix A - Proposed changes to the *Findings of Fact and Conclusions of Law* (additions underlined, deletions in strikethrough)

Pursuant to Rule 14.3(b) of the Commission's Rules of Practice and Procedure, ORA proposes the following changes to the findings of fact and conclusions of law:

Findings of Fact

1. On October 15, 2017, the Governor signed AB 1665 into law which amended Pub. Util. Code Sections 281, 912.2, and 914.7, the statutes governing the CASF program.
2. The February 14, 2018 Amended Scoping Ruling bifurcated the proceeding, into Phase I and Phase II, in order to focus on the Adoption Account first.
3. Phase I of this proceeding addresses implementation issues related to the Adoption, Public Housing and Loan Accounts.
4. Phase II will address Broadband Infrastructure, Line Extension and Rural and Urban Regional Broadband Consortia Grant Account issues.
5. The Amended Scoping Ruling contained draft Staff Proposals, prepared by the Commission's Communications Division, in order to implement Phase I and II of the program.
6. The Commission held workshops/public forums throughout the state in March 2018 in Oroville (March 14), Madera (March 16), El Centro (March 28) and Los Angeles (March 30), in order to solicit input on the implementation of these program changes, learn of existing carrier commitments, and develop partnerships for regional solutions.
7. Appendices 1, 2, and 3 of this decision have been revised and updated in response to parties' comments and reply comments as well as feedback from the workshops/public forums held in this proceeding.
8. Rules, application requirements, and guidelines for the new Broadband Adoption Account are summarized in Appendix 1.
9. It is not necessary to adopt a specific goal for the Broadband Adoption Account.
10. ~~The draft Staff Proposal includes definitions applicable to the Adoption Account only.~~

11. The draft Staff Proposal lists the activities and items eligible for funding in the Broadband Adoption Account including Broadband Access and Digital Literacy.
12. The draft Staff Proposal included a subsidy level for acceptable projects.
13. A school-provided device, such as “homework ready” mobile devices, or hotspot devices, may be useful to for students to complete homework at home.
14. The draft Staff Proposal included a list of information required from applicants as part of the application submission and review.
15. The draft Staff Proposal included proposed evaluation and scoring criteria for scoring applications/projects.
16. The draft Staff Proposal proposed application windows for adoption projects.
17. The draft Staff Proposal included criteria in which the Commission assigns to staff the task of approving applications that meet certain criteria.
18. The draft Staff Proposal included Reporting and Payment reimbursement requirements, which included both a ramp-up period and biennial payment.
19. Updated adopted guidelines for the Public Housing Account are set forth in Appendix 2.
20. Existing guidelines for the Public Housing Infrastructure Projects state that staff will post all applications forms (but not the supporting materials that accompany the application) on its website after the date of submission.
21. The draft Staff Proposals state that an applicant for Public Housing adoption projects needs to provide a detailed description of its proposed project, including a description of the activities the Commission will fund, such as education and outreach efforts.
22. There are three existing loans and one pending loan in the Revolving Broadband Infrastructure Revolving Loan Account program, and no additional loan requests will be processed and no additional loans will be issued pursuant to AB 1665.
23. The Commission is working with a third party financing authority to service the existing loans.

Conclusions of Law

1. The Guidelines set forth in Appendix 1 are consistent with the intent and objectives of the Adoption Account as stated in in Pub. Util. Code § 281(j)(1)-(j)(5).
2. Pub. Util. Code § 281(j)(5) requires the Commission to give preference to programs in communities with demonstrated low broadband access ~~certain communities~~ for the Adoption Account, including low-income and senior communities, and communities facing socioeconomic barriers to broadband adoption.
3. In order to ensure that Broadband Adoption Account Funds are allocated throughout the state, only \$5 million of the \$20 million authorized should be awarded in the first application window and should serve as a pilot to determine the effectiveness of the Adoption strategy.
4. In order to ensure that Adoption Account Funds are equitably distributed throughout the state, the Commission should consider factors specified in the statute to prioritize projects for funding.
5. Preference should be given for projects serving low-income communities with a median household income at or below the California Alternate Rates for Energy program income limits for a household of four; projects serving a community with more than 50% of residents having limited English proficiency; projects serving a community with more than 50% of residents having only a high school diploma or less; projects serving a rural community; projects having community support, endorsements and/or partnerships; projects that offer internet access at low or no cost to the user; and projects serving a community with some other demonstrated disadvantage which affects broadband adoption as documented by applicant.
6. Pub. Util. Code, § 281(j)(2) outlines eligible applicants for the Adoption Account.
- ~~7. The definition of “low broadband access” should be revised and apply to the Adoption Account only.~~
8. The income limits should be updated to reflect those limits for a “household of 4” as opposed to a “family of 4,” consistent with the CARE program.

9. Appendix 1 should include “Community support and Endorsements” as well as “Partnerships” in Information required from Applicant, and include “Coordination” on the sample “Preference Checklist” reflected in Appendix 1, Attachment C.

10. It is reasonable for Appendix 1 to address Broadband Adoption Account issues as follows:

- Include language to require applicants and projects to be technology neutral and not favor one technology over another;
- Include language to preclude for-profit organizations from receiving funding;
- Include language to preclude projects from favoring any ISP over another;
- For Digital Literacy and Broadband Access Projects, travel (up to 10% of the grant amount) is a reimbursable cost;
- For Digital Literacy Projects, eliminate funding for devices;
- For Broadband Access Projects, call centers that will increase broadband access and adoption are eligible; and
- For Broadband Access Projects, general technical support beyond installation for the duration of the project is allowed.

11. For Broadband Access Projects, it is reasonable to change the limits on computers from \$1,000 to \$750 per computer with a maximum of 15 computers per location.

12. It is reasonable that the information required from applicants as part of the application submission and review process contained in Appendix 1 should include the additional requirements:

- Performance Metrics Plan for tracking outcomes (e.g. surveys, subscription verification/bill, etc.);
- Community Support and Endorsements to demonstrate local and relevant experience and outreach;
- Partnerships with other organizations, such as media and marketing groups and ISPs; and
- Where appropriate, increase project timeframe to two years, following the ramp-up period.

13. Given that the Broadband Adoption Account is new and the uncertainty in the number of applications to be received, it would be unreasonable to set a review time for project proposals at this time.

14. Appendix 1 should include an increased threshold for Expedited Review of \$100,000.
15. Appendix 1 should implement a performance/outcome based payment regime by requiring reporting and payment requests to include documentation of performance/outcomes, including but not limited to, a summary of subscriptions resulting from the project, hours of training, etc. consistent with application Performance Metrics Plan and Work Plan.
16. Appendix 1 should allow the Commission to pay ramp-up costs (up to 25%) upfront and require documentation of performance/outcome thereafter.
17. Appendix 1 should address Data Collection issues.
18. Appendix 1 should add Collaboration and Sustainable funding.
19. Existing Public Housing Infrastructure Project guidelines should be modified to require that a notice of availability be sent to the CASF Distribution List.
20. It is reasonable to modify the Existing Public Housing Infrastructure Project Guidelines to require that applicants include a strategy for ensuring new residential broadband subscriptions.
21. It is reasonable to allow pending loan applicants in the Broadband Infrastructure Revolving Loan Account to modify their applications in order to be awarded additional grant funds.
22. It is reasonable to allow the pending loan application for the Surfnet Communications, Inc., Las Cumbres project to modify its application to remove the loan portion since new CASF loan funds are no longer available.