

**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
(Filed October 25, 2012)

**REPLY COMMENTS OF THE UTILITY REFORM NETWORK ON THE PROPOSED
DECISION IMPLEMENTING THE CASF INFRASTRUCTURE ACCOUNT REVISED
RULES**

Ashley L. Salas, Staff Attorney
The Utility Reform Network
1620 5th Ave, Ste. 810
San Diego, CA 92101
(619) 398-3680
asalas@turn.org

Dated: December 4, 2018

TABLE OF CONTENTS

- I. INTRODUCTION1
- II. The Affordable Offering Requirement Versus the Low-Income Offering Qualifying for Additional Funding1
 - A. Affordable Offering Requirement.....1
 - B. Low-Income Offering Qualifying for Additional Funding.....3
- II. CONCLUSION5

I. INTRODUCTION

Pursuant to Rule 14.3 of the Commission’s Rules of Practice and Procedure, The Utility Reform Network (“TURN”) respectfully submits these reply comments on the Proposed Decision of Commissioner Guzman Aceves (“PD”). In addition to the comments below, TURN supports Greenlining’s reply comments on the PD.

II. The Affordable Offering Requirement Versus the Low-Income Offering Qualifying for Additional Funding

In opening comments, Frontier appears to conflate the application processes for an affordable offering and the low-income offering.¹ The Proposed Decision sets out a *requirement* for all CASF applicants to offer an affordable service offering to qualify for the base-level project funding of 60% (hereinafter “affordable offering”), and the PD provides an *opportunity* for providers to receive an additional 10% project funding if the provider offers a low-income service offering that is no more than \$15 per month.² Yet the requirement for an affordable offering has no price cap. Therefore, while a low-income offering can qualify as a provider’s affordable offering, an affordable offering may not be priced low enough to qualify for additional funding as a low-income offering. This distinction should be made clear in the rules to distinguish the similar – but different – concepts of the affordable offering and the low-income offering.

A. Affordable Offering Requirement

In opening comments on the PD, multiple parties suggest edits to the affordable offering requirement. TURN addresses each suggestion in turn below.

Without citing any authority, Frontier and CCTA challenge the Commission’s authority to require an affordable offering to receive the base-level 60% project funding. Yet, these parties overlook the fact that a provider’s participation in the CASF program is voluntary.³ The Commission is not prohibited from setting conditions for voluntary program participants to receive CASF funds. This is especially the case if those conditions further the *overall* statutory and program goals of increasing deployment and adoption of broadband technology, including

¹ Frontier Opening Comments on the PD at p. 3 (“The PD also suggest that providers *must* offer an affordable broadband product with a cost of less than \$15 a month” (emphasis added)).

² Proposed Decision, Appendix A at pp. 5-6, 12.

³ Frontier Opening Comments on the PD at p. 3; CCTA Opening Comments on the PD at p. 15 (CCTA points to its discussion in Reply Comments on the September 2018 ALJ Ruling (dated September 28, 2018) at pp. 4-6, which also does not cite any authority to support its position).

providing conditions that allow low-income households to afford broadband.⁴ While the PD does not specify a ceiling for the rate for its affordability requirement, Joint Consumers propose that the affordability requirement be revised to require a ceiling of up to \$25 per month, a revision that would be within the Commission’s jurisdiction to require as a condition of a provider’s participation in the voluntary CASF Program.⁵

Joint Consumers’ proposal to set a ceiling for the affordable service rate is consistent with CETF’s and Race’s proposals that the affordable offering be defined as having “rates in the range of existing or past affordable offers by California broadband providers with no hidden fees or charges, and no credit check.”⁶ Setting a bright line definition will help guide applicants and reduce any confusion about what will qualify as an affordable offering. If, after the Commission has data from several applications and related projects, the Commission finds that providers need more flexibility, the Commission could consider using the \$25 per month as a presumption of reasonableness giving the applicant the burden to demonstrate affordability for requests to price the affordable offering above \$25. Moreover, TURN supports the proposals of CETF and Race that the affordable offering should not include any hidden fees or charges, and should not include a credit check, and TURN recommends that the PD be revised to reflect this proposal.

The Commission should not rely on other public purpose programs to attempt to make CASF-funded broadband affordable. The Small LECs erroneously point to the California

⁴ Joint Consumers Opening Comments on the September 2018 ALJ Ruling (dated September 21, 2018) at pp. 7-8. *Contra*, CCTA Reply Comments on the September 2018 ALJ Ruling (erroneously claiming the statement of intent set out in AB 1665 was limited the CASF Adoption Account instead of to all entire CASF Program).

⁵ Joint Consumers Opening Comments on the PD at p. 14 (citing Joint Consumers Opening Comments on the September 2018 ALJ Ruling at pp. 8-9). *See also*, D.14-01-036 (R.11-03-013) at pp. 61 (“As we established in D.10-11-033, since wireless participation in the LifeLine Program is voluntary, wireless providers may withdraw from the program at any time. However, wireless providers are required to provide a 30-day notice to customers and fulfill any contractual obligations that they have entered into with their customers before ceasing their participation in the LifeLine Program”) and 131 (“The decision to participate in LifeLine should rest with the VoIP provider and if a provider voluntarily participates in the program, the Commission may require such participation to occur within the parameters of the Lifeline rules”). *Contra*, Frontier Opening Comments on the PD at p. 3

⁶ CETF Opening Comments on the PD at p. 7; Race Opening Comments on the PD at p. 5; Joint Consumers Opening Comments on the PD at p. 14. *See also*, Race Opening Comments on the September 2018 ALJ Ruling at p. 7 (“Race *voluntarily* offers an affordable low-income plan to its customers (\$25/month for symmetrical speeds of 25 Megabits per second) which has been well-received by our customers”); PD at pp. 62 (“Frontier and AT&T already offer nationwide low-income plans that would meet our criteria”).

LifeLine proceeding and the federal Lifeline program that supports voice and broadband offerings, as addressing affordability.⁷ Yet for a consumer to obtain the state or federal Lifeline benefit, the consumer's provider must participate in the Lifeline program(s) and the customer must meet restrictive eligibility criteria. While Joint Consumers would encourage the Commission to revise the CASF minimum performance standards to meet or exceed the federal Lifeline broadband minimum standards, there is no current CASF requirement that the providers participate in the Lifeline programs.⁸ Therefore, the Commission should not look to the Lifeline programs to address low-income households' affordability barriers to accessing broadband.⁹

The affordable offering requirement is crucial for low-income household to accomplish the overall CASF program goal of increasing broadband adoption throughout the state. Without the affordable offering requirement, low-income consumers will continue to be on the wrong end of the digital divide because they cannot afford broadband services.¹⁰

B. Low-Income Offering Qualifying for Additional Funding

With regards to the additional project funding available for projects that provide a low-income offering of less than \$15 per month, CCTA challenges the Commission's authority to prioritize low-income communities, Race questions the PD's method of determining whether a community is low-income, and Frontier argues that the Commission should not enact a rate cap for the low-income offering. TURN addresses each in turn below.

CCTA's claim that prioritizing low-income areas will lower the priority of projects with Legislative-mandated preferences is pure hyperbole.¹¹ First, CCTA's comments ignore the distinction that the statute and the Commission draw, that prioritizing one area does not prohibit

⁷ Small LECs Opening Comments on the PD at p. 6.

⁸ Joint Consumers Opening Comments on the September 2018 ALJ Ruling at p. 5, 9 ("One metric the Commission can use in determining if an offering is 'quality,' is to use the same minimums as the federal Lifeline for Broadband program. Although there is significant uncertainty in the federal program, incentivizing CASF infrastructure deployment that qualifies for Lifeline broadband subsidies would help low-income Californians afford service").

⁹ See also Joint Consumers Opening Comments on the PD at p. 14 (citing the Affordability proceeding, R.18-07-006). TURN is an active participant in the Affordability docket and TURN encourages other parties to participate also, but the timing of work in the Affordability proceeding is uncertain. There is urgency and statutory mandates that the CASF proceeding must move forward, including with the affordable offering and a cap of \$25 per month.

¹⁰ CETF Opening Comments on the PD at pp. 1, 3. See also, CETF Opening Comments on the September 2018 ALJ Ruling at pp. 7-8, 10; CETF Reply Comments on the September 2018 ALJ Ruling at p. 4.

¹¹ CCTA at pp. 14-15.

the Commission from approving additional funding for projects outside of the prioritized area.¹² Second, CCTA’s misstates that the PD “elevate[s] th[e] policy choice [of ensuring broadband availability in low-income communities] above the express statutory direction in Section 281(b)(2)(B).”¹³ As support for its interpretation, CCTA points to a single sentence in the PD that states projects serving low-income communities will be prioritized over projects serving higher-income communities, but does not properly explain how it believes this income prioritization negatively impacts prioritizing unserved areas.¹⁴ The PD explicitly acknowledges the Commission’s prioritization of projects for unserved areas by prioritizing those areas and by providing the opportunity for projects in unserved areas to receive 100% funding, regardless of community or individual income levels.¹⁵ TURN respectfully recommends the Commission rejects CCTA’s claim.

Race appears to have misunderstood the method by which the PD proposes that the Commission will use to determine whether a community is a low-income community.¹⁶ The PD states that a community is a low-income community if the “*median* household income for a community is less than \$50,200.”¹⁷ The *median* income is the midpoint of a distribution.¹⁸ Depending on the number of households in the project area, the PD’s method would require a smaller percentage of low-income households than Race’s proposal of 51%.¹⁹ For example, if a project area includes 999 households then a community qualifies as low-income under the PD if at least 500 households meet the CARE income standard, yet Race’s proposal would require 51% -- or 509 households -- to be low-income.²⁰ Therefore, TURN recommends the Commission not adopt Race’s proposed change, because doing so would result in a higher threshold for

¹² Proposed Decision at p. 34; Proposed Decision, Appendix A at p. 1 (citing Pub. Util. Code sec. 281(b)(2)(B)(ii)).

¹³ CCTA at p. 15.

¹⁴ Proposed Decision at p. 56.

¹⁵ Proposed Decision at p. 34.

¹⁶ Race Opening Comments on the PD at p. 2.

¹⁷ Proposed Decision at p. 22 (emphasis added).

¹⁸ English Oxford Dictionary, “median,” retrieved from

<https://en.oxforddictionaries.com/definition/median> (last viewed December 3, 2018) (“Denoting or relating to a value or quantity lying at the *midpoint of a frequency distribution* of observed values or quantities, such that there is an equal probability of falling above or below it”) (emphasis added).

¹⁹ Race Opening Comments on the PD at p. 2.

²⁰ As the project area includes more than 49 households, the median household-income is a lower threshold than 51% of households in a project area.

determining whether a project serving a low-income community would qualify for additional funding, a result that both Race and TURN seek to avoid.

Frontier argues that the Commission should not “set pricing mandates . . . nor should it lock in rates for any providers operating in a competitive environment.”²¹ As stated above, Frontier appears to confuse the affordable offering requirement and the low-income offering that qualifies for *additional* funding. As written, the PD only sets a maximum rate for the low-income offering as a condition that would qualify a project for additional funding.²² Additionally, as explicitly stated in the PD “Frontier and AT&T already offer nationwide low-income plans that would meet [the Commission’s] criteria” suggesting that this criteria is reasonable and would not likely dissuade provider participation in the program as Frontier warns.²³ Moreover, this is not a competitive environment. CASF funding is available if – and only if – no other provider offers 6/1 Mbps service in the census block.²⁴ Essentially, the CASF recipient is receiving subsidy because no other provider will or can serve the census blocks in its project area. Therefore, the Commission should reject Frontier’s concerns and recommendations as unfounded.

II. CONCLUSION

For the reasons set forth above, TURN request that the PD be modified in accordance with our recommendations here.

Dated: December 4, 2018

/s/

Ashley L. Salas, Staff Attorney
The Utility Reform Network
1620 5th Ave, Ste. 810
San Diego, CA 92101
(619) 398-3680
asalas@turn.org

²¹ Frontier Opening Comments on the PD at p. 3.

²² Proposed Decision at p. 22. Although, as discussed above, the Commission would be well within its authority to set a rate for the affordable offering requirement. D.14-01-036 (R.11-03-013) at pp. 61, 131, 135.

²³ Frontier Opening Comments on the PD at p. 3.

²⁴ Pub. Util. Code sec 281(f)(5)(A) (“Projects eligible for grant awards shall [be] . . . in census blocks where no provider offers access at speeds of at least 6 mbps downstream and one mbps upstream”).