

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

**Communications Division  
Broadband, Video and Market Branch**

**RESOLUTION T-17697  
May 7, 2020**

**R E S O L U T I O N**

**Resolution T-17697 – Establishing the Criteria for the California Department of Education in Response to COVID-19 within the California Advanced Services Fund Broadband Adoption Account**

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**SUMMARY**

This Resolution adopts criteria and a process for the distribution of grants from the California Advanced Services Fund (CASF) Adoption Account to public schools and school districts in response to the COVID-19 public health emergency and sets aside an amount not to exceed \$5 million for this distribution. The California Public Utilities Commission (Commission) will work with the California Department of Education (CDE) which will determine the specific school and school district needs for funding allocation. The Commission will maintain oversight of this fund distribution.

**BACKGROUND**

On March 19, 2020, Governor Gavin Newsom signed Executive Order N-33-20 requiring Californians to heed the order of the California State Public Health Officer and the Director of the California Department of Public Health. That order mandates that all individuals living in the State of California must stay home or at their place of residence, except as needed to maintain continuity of operation of the federal critical infrastructure sectors, in order to address the public health emergency presented by the COVID-19 disease (Stay-at-home Order). Subsequently, the Governor announced further efforts to provide distance learning to California's students as a result of school closures to mitigate the COVID-19 outbreak. These efforts include working together during these unprecedented times, minimizing any impact to students during distance learning, and finding ways to better serve students and facilitate learning.

On March 26, 2020, the Assigned Commissioner issued an Assigned Commissioner Ruling (ACR)<sup>1</sup> requesting comments on CASF Broadband Infrastructure Account rules and application windows in R.12-10-012.

Question 1 of the questions posed to parties for comment focused on issues pertaining to COVID-19. Specifically, Question 1 stated, “In the context of the CASF, what can and should the Commission do in response to COVID-19”<sup>2</sup> to the use of Adoption Account funding?<sup>3</sup>

An ALJ ruling, also issued on March 26, 2020, required that comments on Question 1 be filed and served no later than April 9, 2020, with reply comments to be filed and served no later than April 15, 2020.

Comments were filed by sixteen parties:<sup>4</sup> Access Humboldt (AH), AT&T, California Internet (dba GeoLinks), City & County of San Francisco (CCSF), California Cable and Telecommunications Association (CCTA), Central Coast Broadband Consortium (CCBC), California Emergency Technology Fund (CETF), California Department of Education (CDE), Electronic Frontier Foundation (EFF), Greenlining, Pacific Lightwave, Public Advocates Office, Race Telecommunications, Inc., Rural County Representatives of California (RCRC), Sacramento Public Library and the Small Local Exchange Carriers (LECs).

On April 13, 2020, the Assigned ALJ issued an e-mail ruling informing parties that the Commission's Communications Division (CD) will serve a proposed resolution that would modify the CASF Adoption Account rules and policies consistent with the record developed in response to Question 1 of the March 26, 2020 ACR. The draft resolution will be placed before the CPUC for a vote at a future business meeting. The ALJ ruling further directed that if parties would like to comment on this procedural action, they may do so concurrently in their reply comments to Question 1 that are due to be filed and served no later than April 15, 2020.<sup>5</sup>

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<sup>1</sup> Assigned Commissioner Ruling Requesting Comments on Broadband Infrastructure Rules and Application Windows [R.12-10-012] March 26, 2020.

<sup>2</sup> Id. at p 4.

<sup>3</sup> Id.

<sup>4</sup> Some parties' comments did not specifically address the Adoption Account but addressed other CASF accounts/issues.

<sup>5</sup> Assigned Administrative Law Judge Email Ruling dated April 13, 2020.

Reply comments were filed by eight parties: AT&T, CCTA, California State Library (CSL), California Internet (dba GeoLinks), CCBC, CETF, NBNC and the Public Advocates Office.

### SUMMARY OF COMMENTS

Most parties that commented on the Adoption Account generally support using the Adoption Account funding to help during the COVID-19 public health emergency. For example, Greenlining proposed that the Commission use CASF funds as a way to supplement existing efforts to close the digital divide among students affected by COVID-19 school closures.<sup>6</sup> CCTA supported use of CASF funds related to COVID-19 if that use is “consistent with legislative direction and limitations in the CASF authorizing statute.”<sup>7</sup> CDE cited the needs of students and schools during COVID-19 and proposed that, based on existing structures between the CDE and County offices of education, CDE help disseminate resources directly to students who are identified as needing it most in schools through the County offices of education.<sup>8</sup> Four parties also supported the distribution of hotspots through the Adoption Account.<sup>9</sup> For example, RCRC cited the needs for hotspots and computer equipment and students attempting to remotely attend class.<sup>10</sup>

### SUMMARY OF REPLY COMMENTS

In reply comments, there was general agreement that hotspots should be an allowable device under the Adoption Account.<sup>11</sup> CETF further asserted that CASF should be cautious against simply purchasing and giving away computing devices and wifi hotspots, but was also receptive to new ways of working together, stating:

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<sup>6</sup> Greenlining Opening Comments at 1.

<sup>7</sup> CCTA Opening Comments at 2. CCTA also notes other factors such as supporting and complementing activities already funded by other public or private investment, can reasonably be implemented in a timely and effective manner given the urgency and (hopefully) relatively short duration of the COVID-19 public health emergency, and does not undermine or divert from achieving the CASF program’s long-standing statutory purpose to deploy broadband infrastructure in completely unserved areas of California where no business case exists for private investment without a subsidy.

<sup>8</sup> CDE Opening Comments at 1.

<sup>9</sup> Opening Comments: GeoLinks at 4; CCSF at 2; Public Advocates Office at 3; RCRC at 3, 4. Other parties did not specifically comment on this issue.

<sup>10</sup> RCRC Opening Comments at 3.

<sup>11</sup> CCTA Reply Comments at 3; 4. CSL Reply Comments at 3. CCBC Reply Comments at 1-3.

“CETF supports broadened eligibility to allow larger institutions to become grantees both to manage more efficiently the distribution of devices and to organize the distribution of information about affordable offers and provide technical assistance for digital literacy training. Larger institutional grantees, such as CDE and SPL, also will be better able to establish evaluation monitoring procedures and collect information to report on results related to increasing adoption.”<sup>12</sup>

CSL also supported measures taken to increase hotspot availability as “public libraries and county offices of education can be the most effective and efficient local government entities to disperse devices and hotspots to members of their local communities.”<sup>13</sup>

### **ADOPTION ACCOUNT BACKGROUND**

AB 1665 added the Adoption Account<sup>14</sup> which provides grants to increase publicly-available or after school broadband access and digital inclusion. Eligible applicants for digital inclusion are local governments, senior centers, schools, public libraries, nonprofit organizations, and community-based organizations. AB 1665 also requires the Commission to give preference to programs in communities with demonstrated low broadband access, including low-income communities, senior communities, and communities facing socioeconomic barriers to broadband adoption.

In June 2018, the Commission issued Decision (D). 18-06-0322 which implemented provisions of AB 1665 and adopted new rules for administering the CASF Adoption Account. On March 1, 2019, the Commission issued D. 19-02-008 which revised the Adoption Account Requirements and Guidelines.<sup>15</sup>

### **DISCUSSION**

#### **CDE as the Facilitator of Grant Distribution**

CDE oversees the state's public school system, which is responsible for the education of more than six million children and young adults in more than 10,000 schools with

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<sup>12</sup> CETF Reply Comments, at 6.

<sup>13</sup> CSL Reply Comments at 3.

<sup>14</sup> AB 1665 is codified at Public Utilities (Pub. Util.) Code section 281.

<sup>15</sup> Decision Revising the CASF Broadband Adoption Account, [D.19-02-008] (2019), Appendix 1.

295,000 teachers.<sup>16</sup> CDE is working closely with agency partners in response to COVID-19.<sup>17</sup>

CD proposes that CDE facilitate the determination of the specific school and school district needs for funding in order to meet the distance learning needs of students and schools as a result of the COVID-19 public health emergency. Specifically, CDE would act as the facilitator in the distribution of funding to individual schools who are eligible applicants under the Adoption Account and would be the intended recipients of these funds.<sup>18</sup> CDE will prioritize schools that need computing devices and hotspot devices and ensure distribution of this funding to the schools. In its comments, CDE stated that it would be helpful to have funding to assist students who lack a device enabling them to participate in digital learning during this crisis. CDE stated that the cost of student devices generally starts at \$250-\$300. This funding would provide students with the computing devices for continued learning, especially for those who would not otherwise have computing devices and therefore would be unable to participate in a virtual classroom or in distance learning activities. CDE informed Staff that hotspot devices may also be needed for students who presently have no Internet access. CDE further stated that this would provide immediate help to struggling schools and students to address the impacts of COVID-19 and the new digital learning environment that both students and schools face. CDE has also informed staff that it has mechanism in place to prioritize and distribute the needed devices.<sup>19</sup>

#### **A. Existing Rules and Requirements Waiver**

Based on the Governor's Stay-at-home Order and the unique circumstances presented by this crisis, CD recommends that the Commission approve a waiver of various Adoption Account rules. Specifically, key provisions of the Adoption Account Requirements and Guidelines<sup>20</sup> that should be waived in this instance include the following:

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<sup>16</sup> California Department of Education ([www.cde.ca.gov](http://www.cde.ca.gov)).

<sup>17</sup> Motion of the CDE for Party Status and Opening Comments, April 9, 2020, states "recent surveys conducted on behalf of CDE on the needs of California Schools have shown that nearly 188,000 students are lacking home connectivity and nearly 203,000 are lacking device to connect in order to participate in digital learning experience." In a call with staff, CDE stated that the needs are even greater what the surveys show.

<sup>18</sup> Pub. Util. Code, § 281(j)(2).

<sup>19</sup> CDE call with Staff on April 15, 2020.

<sup>20</sup> D.19-02-008, Appendix 1, pp.1-13.

- Take home devices now limited to Digital Literacy projects would be available for providing general broadband Internet access.
- The reimbursement cap for devices for broadband access projects now limited to 15 devices maximum per project would be lifted. Also, the maximum cap for devices would be lifted.
- Subsidy levels limiting Commission funding to 85% of total eligible program costs would be waived and the Commission may fund up to 100% of the costs of distributed devices and hotspot devices.
- Presently, routers and computing devices (not including smartphones) are allowable for reimbursement. In this instance, hotspots and any equipment needed for providing hotspots<sup>21</sup> would also be allowable expenses.
- Adoption Account rules requiring applicants to complete and submit a project application for each project location along with a signed affidavit, would be waived. In this instance, the Commission will rely on CDE to review and approve grants to schools and school districts. While the Commission cannot delegate its discretionary authority to CDE, under the unique requirements of this moment, it is appropriate for the Commission to substantially defer to CDE's expertise. As a state agency, CDE has fiduciary responsibilities which include accounting for the distribution of state funds and equipment; CDE's oversight will suffice in place of affidavits from each school/ school district receiving grants. The Commission will also rely on CDE to evaluate school /school districts needs in lieu of any per-location application submitted to the Commission.
- Adoption Account rules provide that grantees may request payment on a reimbursement basis. In this instance, the Commission would waive this requirement, and would make funds available to CDE in advance with the understanding that CDE will oversee the distribution of the funds for the purposes specified here. The Commission will set aside an amount not to exceed \$5M for the purposes stated herein. For fiscal reporting purposes, this set-aside will be considered payments for devices and hotspots to respond to the present crisis.
- Specific to the Adoption Account rules, projects can be approved by either an Expedited Review process or through a Commission Resolution. This Resolution grants CDE the authority to approve projects for eligible applicants and projects as described below, subject to Commission review.

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<sup>21</sup> The Adoption Account does not allow subsidizing the costs of providing broadband service to households.

- Reporting requirements as presently stated in the Adoption Account rules are modified as indicated in the Reporting Section below.

CD further proposes that the Commission and CDE prepare a Memorandum of Understanding (MOU) outlining the roles, responsibilities and deliverables of the parties with respect to this proposal.

The Commission expects a commitment from CDE to comply with the Resolution and the MOU. Further, we emphasize that this waiver is granted based only on the unique characteristics presented during the COVID-19 crisis, and has *no precedential effect*.

### **B. Eligible Applicant**

Schools and school districts are eligible applicants under Adoption Account rules and the intended recipient of these funds. CDE will act as the facilitator in the distribution of funding to schools determining the need by schools and school districts.

### **C. Eligible Projects and Funding Criteria**

Eligible projects include programs to increase publicly-available or after-school broadband access and digital inclusion.<sup>22</sup> Per D.19-02-008, schools and school districts in communities facing socioeconomic barriers to broadband such as low-income communities, communities with a high percentage of residents with limited English proficiency, communities with a high percentage of residents with limited education attainment, and communities with some other demonstrated disadvantage will have priority.<sup>23</sup> CDE will review requests from schools and school districts and determine whether or not the needs of the specific school or school district would have priority for funds. Projects to be allocated funds consistent with this Resolution shall only be for computing devices and hotspot devices. No other costs will be covered.

### **D. Performance Criteria**

The Commission expects CDE to provide funds only for computing devices and hotspots to schools and school districts with demonstrable needs in line with funding criteria. The Commission anticipates that CDE will not exceed per device costs recommended in this Resolution and that CDE will provide reporting on money spent

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<sup>22</sup> Pub. Util. Code, § 281(j)(1).

<sup>23</sup> Pub. Util. Code, § (j)(2) and (5), D.19-02-008, Appendix 1, pp. 3-4.

as described in the reporting section of this Resolution. Further, the Commission expects that CDE will distribute funds consistent with this Resolution and the MOU.

### **E. Reimbursable Expenses**

Only the costs of acquiring computing devices and deploying hotspot devices are allowable expenses. The Commission anticipates that the costs per computing device will not be more than \$300 per device. The cost per hotspot device has not been determined but the Commission assumes that costs incurred will be reasonable.

### **F. Reporting**

The Commission expects CDE to provide information to the Commission so that the Commission can exercise its oversight of the distribution of funds. The Commission expects CDE to provide the following information:

- The name, location, and the county-district-school code for the school / school district that received funds through this distribution.
- The amount of the grant awarded per school / school district location.
- The number of computing devices and hotspot devices purchased with the grant.
- The type of devices distributed and the general cost per device / hotspot.
- The number of students who benefited from the distribution.

The Commission expects CDE to provide this reporting every six months until either all of the funds have been spent or one year has elapsed after this Resolution is approved.

### **STAFF RECOMMENDATIONS**

Staff supports swift action by the Commission in response to issues that have a nexus with COVID-19 impact mitigation. In response to the Governor's Stay-at-home Order, Staff recommends CDE act as the facilitator for the distribution of funds to schools for the purposes specified in this Resolution. Schools are eligible applicants and the intended recipients of Adoption funding. Providing students with the tools to learn at home during this unprecedented time and to mitigate the transition to student distance learning is consistent with the Adoption Account's statutory purpose to increase publicly-available or after school broadband access and digital inclusion.



## **COMMENTS**

In compliance with Pub. Util. Code section 311(g), a copy of this proposed Resolution was either mailed or e-mailed to all parties of record in R.12-10-012 and the CASF Distribution List on April 17, 2020.

Public Utilities Code section 311(g)(1) provides that this Resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived by Commission adopted rule.

The 30-day comment period has been reduced pursuant to Rule 14.6 (a)(1) and (2) of the Commission's Rules of Practice and Procedure, which allows for reduction or waiver of the 30-day period for an "unforeseen emergency situation," including "[a]ctivities that severely impair or threaten to severely impair public health or safety..." (Rule 14.6(a)(1)) and "[a]ctivities that severely impair or threaten to severely impair public health or safety... (Rule 14.6(a)(2)) Each of these situations applies here.

## **FINDINGS**

1. On March 19, 2020, the Governor signed Executive Order N-33-20 requiring Californians to heed the order of the California State Public Health Officer and the Director of the California Department of Public Health that all individuals living in the State of California stay home or at their place of residence, except as needed to maintain continuity of operation of the federal critical infrastructure sectors, in order to address the public health emergency presented by the COVID-19 disease (stay-at-home order).
2. On March 26, 2020, the Assigned Commissioner issued an Assigned Commissioner Ruling (ACR) requesting comments on CASF Broadband Infrastructure Account rules and application windows in R.12-10-012..
3. On April 9, 2020, CDE submitted a motion requesting party status and opening comments and proposed that CDE help disseminate resources directly to students who are identified as needing it most in schools through the County offices of education.

4. CDE can determine the specific school and school district needs for funding allocation in order to meet the distance learning needs of students and schools as a result of the COVID-19 public health emergency.
5. Based on the Governor's Stay-at-home Order and the unique circumstances presented by this crisis, it is reasonable for the Commission to approve a waiver of various Adoption Account rules in order for CDE to act as the facilitator in the distribution of funding to individual schools.
6. Public Utilities Code section 311(g)(2) and the Commission's Rules of Practice and Procedure Rule 14.6 (a)(1) and (a)(2) allow the Commission to reduce or waive the public review and comment period in an unforeseen emergency situation including "[a]ctivities that severely impair or threaten to severely impair public health or safety..." (Rule 14.6(a)(1)) and "[a]ctivities that severely impair or threaten to severely impair public health or safety... (Rule 14.6(a)(2)).

**THEREFORE, IT IS ORDERED** that:

1. The Commission shall set aside an amount not to exceed \$5 million for the distribution of grants from the CASF Adoption Account to public schools and school districts in response to the COVID-19 public health emergency and will work with CDE, which will determine the specific school and school district needs for funding allocation.
2. The Commission and CDE shall prepare a Memorandum of Understanding (MOU) outlining the roles, responsibilities and deliverables of the parties with respect to this proposal.
3. The Commission shall waive the rules governing the Adoption Account in order for CDE to act as the facilitator in the distribution of funding.
4. CDE shall distribute funds consistent with this Resolution and the MOU.
5. The Commission expects a commitment from CDE to comply with the Resolution and the MOU.

The effective date of this order is today.

I hereby certify that the Public Utilities Commission adopted this Resolution at its regular meeting on May 7, 2020. The following Commissioners adopted it:

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Alice Stebbins  
Executive Director