BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Establish a Framework and Processes for Assessing the Affordability of Utility Service.	Rulemaking 18-07-006 (Filed July 12, 2018)

REPLY COMMENTS OF THE UTILITY REFORM NETWORK ON STAFF PROPOSAL ON ESSENTIAL SERVICE AND AFFORDABILITY METRICS

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I. INTRODUCTION

Pursuant to the Administrative Law Judge's Ruling Inviting Comments on Staff Proposal ("ALJ Ruling"), issued on August 20, 2019, The Utility Reform Network ("TURN") submits these reply comments in response to opening comments by Southern California Edison Company ("SCE"), San Diego Gas & Electric Company ("SDG&E")/Southern California Gas Company ("SoCalGas"), Pacific Gas and Electric Company ("PG&E"), AT&T, Small LECs, and California Cable and Telecommunications Association ("CCTA").

II. THE COMMISSION SHOULD REJECT THE UTILITIES' SUGGESTION THAT AFFORDABILITY METRICS SHOULD NOT BE PRESENTED AS PART OF RATE INCREASE APPLICATIONS

SDG&E/SoCalGas, PG&E, and SCE all urge the Commission not to address affordability metrics as part of individual proceedings for rate increases.[1] Instead, the utilities want the Commission to conduct an annual assessment of affordability.[2] In essence, the utilities do not want the Commission to consider the affordability metrics when determining whether or not to authorize rate increases requested by the utilities. This is troubling because the utilities do not want the Commission to consider how rate increases would affect the ratepayers' ability to afford essential utility services. Rather, the utilities only want the Commission to consider "after-the-fact" effects on an annual basis, once the rate increases have already gone into effect. Such an approach would obviously diminish or eliminate the usefulness of the affordability metrics,

[1] SDG&E/SocalGas, p. 10; PG&E, pp. 10-11; SCE, p. 4.
[2] *Id.*

which are supposed to provide insights as part of the Commission's decision-making process when considering rate increases.

In addition, both the OIR and Scoping Memo clearly indicate that the methodologies established in this proceeding should be applied to individual proceedings and rate increase requests. The OIR states that one of the goals of this proceeding is to develop "the methodologies, data sources, and processes necessary to comprehensively assess the impacts on affordability of individual Commission proceedings and utility rate requests."[3] Similarly, the Scoping Memo states that this proceeding should determine the "[m]ethods and processes for assessing affordability impacts across Commission proceedings and utility services."[4]

Thus, the Commission should reject the utilities' attempt to drastically reduce or eliminate the usefulness of the affordability metrics by turning them into an annual reporting exercise.

III. THE COMMISSION SHOULD REJECT THE UTILITES' ATTEMPT TO SHIFT THE BURDEN OF ESTABLISHING THE AFFORDABILITY OF RATES TO THE COMMISSION

Not only do the utilities want the Commission to disregard affordability metrics in rate increase proceedings, the utilities also want the Commission to calculate and maintain the affordability metrics.[5] While TURN agrees that the affordability metrics should be updated on a regular schedule (ideally semiannual but not less than an annual basis) by Commission Staff and published on the public website, that is only one small aspect of the affordability metrics. The affordability metrics should also allow the Commission to assess the affordability impacts of rate increase requests. Since utilities propose rate increases and not the Commission, the utilities

[3] OIR, p. 2.
[4] Scoping Memo, p. 2.
[5] SDG&E/SoCalGas, p. 10; PG&E, p. 6; SCE, p. 5.

should have the burden of demonstrating both 1) the effect of the request on the affordability metrics and 2) the cumulative effect of the request and other pending requests for rate increases on the affordability metrics. As TURN noted previously,[6] the Commission should then examine the changes in these metrics to evaluate questions such as:

- Whether the increases are too burdensome for ratepayers. If yes, should the funding request be funded by reprioritizing other resources instead of overall rate increases?
- Whether changes in affordability metrics are reasonable in general. Are some cities/counties/areas already burdened by high affordability metrics or disproportionately affected by the increase? If yes, should public purpose programs be adopted for these cities/counties/areas if the rate increase is adopted?

The Commission could also start looking at affordability metrics in conjunction with cost effectiveness measures for risk reduction (such as risk spend efficiency).[7] This would allow programs/expenses to be prioritized while considering both dimensions. For example, a program could be very cost effective in terms of reducing risk but could be overly burdensome in terms of affordability. Or, conversely, a program could be less cost-effective compared to another program but contributes a very small increase to the affordability metrics. Depending on the circumstances (or the geographic area being considered), the Commission could use these transparent metrics to determine whether one program may be more reasonable than the other and be able to provide an objective and transparent explanation.

[6] TURN Opening Comments on Staff Proposal, pp. 11-12.
[7] Risk Spend Efficiency was defined and adopted by the Commission in D.16-08-018 and D.18-12-014.

Thus, the Commission should reject the utilities' attempt to shift the burden of establishing the affordability of rates to the Commission. As stated above, the Commission can only assess observed rates and hence only determine affordability "after-the-fact."

IV. THE COMMISSION SHOULD REJECT THE UTILITES' ATTEMPT TO POSTPONE THE IMPLEMENTATION OF AFFORDABILITY METRICS

In addition, SCE and PG&E argue that the Commission should not implement the affordability metrics now but rather assess the metrics over time before using them to inform decision-making.[8] The Commission should reject the utilities' attempt to stall and postpone the implementation of affordability metrics. Faced with one of the highest system average rates in the nation, Californians are burdened with an affordability crisis now.[9] As TURN noted previously, not only should the affordability metrics be implemented now, the Commission should also establish ranges reflecting varying degrees of affordability (even if at high levels such as heat maps).[10] Without such guidance, the affordability metrics only become useful/meaningful after a time series has been developed, which if updated annually, would take many years before one could even determine whether a trend is forming and/or attempt to analyze what factors are affecting the affordability metrics.

Thus, the affordability metrics should be implemented now, and the Commission should provide guidance regarding affordability ranges with the input of stakeholders. Otherwise, establishing these metrics could become a futile exercise for the foreseeable near future.

[8] SCE, p. 2; PG&E, p. 11.
[9] Actions to Limit Utility Cost and Rate Increases (CPUC), p. 16.
[10] TURN Opening Comments, p. 10.

V. IF AFFORDABILITY METRICS ARE ADJUSTED FOR EXISTING PROGRAMS, THEN THEY NEED TO REFLECT ACTUAL ENROLLMENT FOR EACH GEOGRAPHIC REGION

SDG&E/SoCalGas, PG&E, and SCE also argue that the affordability metrics need to be adjusted by program benefits received by low-income customers, such as California Alternate Rates for Energy ("CARE") and Family Electric Rate Assistance ("FERA").[11] While TURN does not object to this proposal in theory, TURN notes that this proposal should only be adopted if the adjustments are able to reflect actual enrollment of the assistance programs for each geographic region. For example, even if the average enrollment across a utility's service territory is 80%, a geographic region that has 85% of households eligible for CARE could have an enrollment rate of only 15%. Using either the average enrollment rate or the eligibility rate would overstate the benefits received by customers in this region and therefore understate the customers' affordability metric (such as AR_{20} or HM). Thus, the affordability metrics should only be adjusted for assistance programs if the adjustments reflect actual enrollment for each geographic region.

VI. THE COMMISSION SHOULD REJECT SDG&E AND SOCALGAS'S REPEAT RECOMMENDATION TO USE %MHI

SDG&E and SoCalGas continue to argue for the adoption of Percent Median Household Income ("%MHI") as an affordability metric even though they concede that the Commission expressed concerns that "the %MHI metric can produce results that vary by location and that it may have different meanings to different people."[12] As stated previously, TURN does not support %MHI for the following reasons:[13] First, by focusing on the median income, %MHI

[11] SDG&E/SoCalGas, p. 7; PG&E, p. 3; SCE, p. 6.
[12] SDG&E/SoCalGas, pp. 4-5.
[13] TURN Opening Comments (May 13, 2019), pp. 19-20.

fails to consider significant populations that may be disproportionately affected by unaffordable bills. This is particularly troubling because low-income and very low-income populations are most in need of the affordability protections contemplated in this proceeding. Second, %MHI may not accurately reflect economic effects of other sources of commodities and subsidies and therefore penalize low-income populations. For example, many higher income individuals receive company-paid cell phones and computers or have access to gyms and drinking water services at work. These implicit subsidies to higher-income individuals further distort the %MHI metric because while higher-income populations tend to increase the median income, they sometimes also pay less for water and telecom services.

Thus, the Commission should continue to reject the use of %MHI as an affordability metric.

VII. REPLY TO COMMENTS BY TELECOMMUNICATIONS/BROADBAND PROVIDERS

TURN agrees with Public Advocates Office and consumer groups that voice and broadband services must be included in an analysis of essential services and affordability.[14] These parties advance a position that is similar to TURN's regarding the importance of broadband.[15] As Public Advocates Office notes, "[i]n addition to voice, broadband service is necessary for full participation in society, with applications in education, employment, health, safety, and more."[16] While some service providers question the appropriateness of evaluating the affordability of essential voice and broadband services in this proceeding, the Commission

[14] Public Advocates Office, September 10, 2019 Comments, pp. 8-9; Greenlining, September 10, 2019 Comments, pp. 1-2. See also, TURN, May 13, 2019 Comments, p. 2.
[15] TURN, May 13, 2019 Comments, p. 2.
[16] Public Advocates, September 10, 2019 Comments at p. 8.

has the jurisdiction and authority to do so and should do so.[17] Each of those service providers' arguments will be addressed below in turn.

A. The Commission Should Reject CCTA and Small LEC's Claims that the Commission is Preempted from Considering the Affordability of Broadband Services

CCTA and Small LECs rely heavily on the Federal Communications Commission (FCC) 2018 *Restoring Internet Freedom Order* ("*FCC 2018 Order*")[18] to argue that that this Commission is preempted from evaluating the affordability of broadband services.[19] CCTA and Small LECs attempt to bolster their argument claiming that an evaluation of the affordability of broadband services is the equivalent of imposing "public-utility regulation" on broadband services.[20] TURN disagrees.

The *FCC 2018 Order,* which is currently under appeal,[21] was directed at overturning the "network neutrality" requirements that the FCC had imposed in its 2015 *Open Internet Order*.[22] Relevant here, the *FCC 2018 Order* notes that when it comes to public-utility regulation, "[r]egulated entities are inherently restricted in the activities in which they may engage, and the products that they may offer."[23] In essence, public utility regulation results in outcomes that constrain the operations of a service provider; in contrast, the Commission's undertaking in this proceeding does not constrain the operation of any broadband service provider. This

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[17] See, e.g., Public Advocates, September 10, 2019 Comments at pp. 9-11, 20-21. See also, generally, TURN, September 10, 3019 Comments at pp. 12-15.
[18] *In the Matter of Restoring Internet Freedom*, Declaratory Ruling, Report and Order, 33 FCC Rcd. 311, 100 (2018).
[19] CCTA, September 10, 2019 Comments, p. 4.
[20] CCTA, September 10, 2019 Comments, pp. 4-5. Small LECs, September 10, 2019 Comments, p. 6.
[21] See, *Mozilla Corp. v. FCC,* No. 18-1051 (D.C. Cir. Feb. 22, 2018).
[22] *In the Matter of Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, March 12, 2015. Hereinafter *FCC Open Internet Order.*
[23] *In the Matter of Restoring Internet Freedom*, Declaratory Ruling, Report and Order, 33 FCC Rcd. 311, 100 (2018).

Commission's classification of voice and broadband as essential services, the consideration of the affordability of essential voice and broadband services, and the consideration of the impact of essential voice and broadband service prices on the affordability of energy and water utility rates, in no way restricts any broadband entity from the activities in which they may engage, or the products that they offer.[24]

CCTA and Small LECs also point to the *FCC 2018 Order* to attempt to paint the collection of data from broadband providers as public-utility regulation.[25] Yet, the *FCC 2018 Order* states otherwise in its "transparency rule," requiring broadband providers to publish their commercial terms:

> "Any person providing broadband Internet access service shall publicly disclose accurate information regarding the network management practices, performance, and commercial terms of its broadband Internet access services sufficient to enable consumers to make informed choices regarding the purchase and use of such services and entrepreneurs and other small businesses to develop, market, and maintain Internet offerings. Such disclosure shall be made via a publicly available, easily accessible website or through transmittal to the Commission."[26]

Certainly, at a minimum, the Commission can request that broadband providers provide data on commercial terms that the FCC requires be released to the public. The plain language of the *FCC 2018 Order*, which is quoted by the Small LECs, makes it abundantly clear that preemption is not automatic: "any state laws that would require the disclosure of broadband Internet access service performance information, commercial terms, or network management practices *in any way inconsistent with the transparency rule*"[27] run afoul of the provisions of the *FCC 2018*

[24] Contra CCTA, September 10, 2019 Comments, p. 3 (arguing the Commission's assessment of affordability is akin to rate regulation).
[25] CCTA, September 10, 2019 Comments, p. 4.
[26] *Restoring Internet Freedom Order,* ¶215, emphasis added.
[27] Small LECs, September 10, 2019 Comments, pp. 5-6, citing the *Restoring Internet Freedom Order* at ¶195, note 729, emphasis added.

Order. It is clear that under the provisions of the *FCC 2018 Order,* as long as the Commission requests information in a manner that is consistent with that Order's transparency rule, there is no preemption of Commission authority on this matter. Indeed, this Commission has authority granted both by the California Legislature, and by the U.S. Congress, to address a variety of issues associated with broadband, and this authority does not conflict with the *FCC 2018 Order*.[28]

The *FCC 2018 Order* also allows states to continue to exercise statutory authority in ways that do not interfere with the FCC's efforts to overturn network neutrality:

> [N]othing in this order forecloses state regulatory commissions from promoting the goals set forth in section 706(a) through measures that we do not preempt here, such as by promoting access to rights-of-way under state law, encouraging broadband investment and deployment through state tax policy, and administering other generally applicable state laws.[29]

Thus, the *FCC 2018 Order* does not impinge this Commission's authority pursuant to Section 706 of the Telecommunications Act or Section 709 of the California Public Utilities Code.[30] As such, the *FCC 2018 Order* has no bearing this Commission's ability to include broadband and voice services in its assessment of affordability. TURN recommends the Commission reject any arguments that claim otherwise.

B. Contrary to Claims Made by CCTA, Consideration of the Affordability of Broadband Services Is Within the Scope of this Proceeding

The Scoping Memo is clear that "The affordability considerations for telecommunications services may be different than for energy or water services but it is worth

[28] TURN, September 10, 2019 Comments, pp. 12-15.
[29] *Restoring Internet Freedom Order,* ¶195, footnote 731, emphasis added.
[30] See, TURN September 10, 2019 Comments, pp. 12-15.

considering whether common definitions and metrics can be developed and it is within the Commission's jurisdiction to consider these affordability issues."[31] Yet, CCTA attempts to argue that broadband services are non-utility services that should be excluded from the "final affordability framework."[32] This suggestion is erroneous on multiple accounts.

First, CCTA's arguments regarding scope are not reasonably supported. The Scoping Memo in this proceeding clearly states that the scope of this proceeding includes the identification and definition of Commission-jurisdictional utility services (which includes telecommunications) as well as "Other issues relating to the Commission's consideration of the affordability of utility services."[33] On the matter of telecommunications services for which the Commission does not regulate rates, the Scoping Memo notes that "Although the Commission does not regulate rates for all telecommunications services, the Commission oversees a number of low-income and universal access programs for telecommunications services and also imposes surcharges for these programs."[34] The scoping memo is also clear that while this instant proceeding will not make adjustments to public purpose programs directly, "[i]t is possible that data gathered and metrics developed in this proceeding may inform the Commission's evaluation of those programs [in their respective program-specific proceedings] in the future."[35] As noted in the OIR, the California Advanced Services Fund (CASF) is one of those universal access

[31] Scoping Memo, November 19, 2018, p. 3.
[32] Similarly, when CCTA argues that another FCC ruling on the ability of states and localities to regulate "the non-cable services provided by cable operators," CCTA provides no connection between the classification of broadband service as an essential service and activity that can be considered "regulation." CCTA, September 10, 2019 Comments, p. 5.
[33] Scoping Memo, November 19, 2018, p. 2.
[34] Scoping Memo, November 19, 2018, p. 3.
[35] Scoping Memo, p. 5.

programs,[36] and consideration of affordability is consistent with statute.[37] For example, the statutory provisions associated with CASF clearly indicate that when awarding CASF line extension grants, the Commission must consider affordability issues:

> "In approving a project pursuant to this paragraph, the commission shall consider limiting funding to households based on income so that funds are provided only to households that would not otherwise be able to afford a line extension to the property, limiting the amount of grants on a per-household basis, and requiring a percentage of the project to be paid by the household or the owner of the property.[38]

For another example, the statutory provisions associated with CASF clearly indicate that when awarding CASF adoption account grants, the Commission must consider affordability issues:

> "The commission shall 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."[39]

Therefore, the affordability of essential voice and broadband services is clearly within the scope of this proceeding, and the data and metrics gathered through this proceeding may inform the Commission's actions for public purpose programs—such as CASF—in the future.[40]

Second, the Scoping Memo identifies "Other issues relating to the Commission's consideration of the affordability of utility services" as within the scope.[41] As noted above, the cost of essential voice and broadband services affect whether consumers can afford essential energy and water services. For the Commission to assess the affordability of essential water, energy, and voice and broadband services, the Commission must include a broad selection of

[36] OIR, Appendix 1.
[37] Contra CCTA, September 10, 2019 Comments, p. 7 (failing to acknowledge low-income and affordability provisions in the CASF statute).
[38] California Public Utilities Code, Section 281(f)(6)(B)(i).
[39] California Public Utilities Code, Section 281(j)(5).
[40] See also, California Public Utilities Code, Section 281(b)(2)(B)(ii) (permitting the Commission to consider other factors not specifically mention in the statute, which the Commission included affordability when creating infrastructure grant rules).
[41] Scoping Memo, p. 2.

essential expenditures.[42] These essential expenditures include, but are not limited to, housing, food, healthcare, and utility services.[43] Therefore, the affordability of voice and broadband services are necessarily within the scope of this proceeding.

C. The Commission Should Define Essential Voice and Broadband Services Sufficient to Promote Health, Safety, Comfort, and Full Participation in Society

CCTA, Small LECs, and AT&T advance flawed arguments that support a restrictive definition of essential broadband service that will not enable full participation in society. These service provider arguments should be rejected by the Commission.

CCTA offers a disingenuous argument in its discussion of the Staff Proposal's transmission speeds associated with essential broadband services. CCTA takes issue with the Staff Proposal's 20/3 Mbps proposal, asserting that those speeds are inconsistent with statute.[44] CCTA alleges that the California Legislature defined broadband as service at 6/1 Mbps in Public Utilities Code Section 281(b)(1)(B). This is simply incorrect. That section of the Public Utilities Code does not define broadband, but "unserved households" in light of the creation of the California Advanced Services Fund. The Legislature also specifies that when funding the deployment of broadband in previously unserved areas, minimum speeds must be at the 10/1 Mbps level. These data speeds are not specified as statewide minimum standards or broadband definitions, as suggested by CCTA, but are instead technology parameters in a program designed to encourage broadband deployment.

[42] TURN, September 10, 2019 Comments, pp. 4-8.
[43] TURN, September 10, 2019 Comments, pp. 4-8. See, e.g., UCAN, September 10, 2019 Comments at p. 5.
[44] CCTA, September 10, 2019 Comments at pp. 8-9.

Small LECs discuss the impact of FCC minimum broadband speeds associated with the receipt of federal universal service support.[45] This element of the Small LECs discussion illustrates the appropriateness of establishing minimum download and upload speeds for essential broadband services. Federal requirements are motivating the Small LECs to upgrade their facilities and to offer higher speed services.[46] While compliance with the FCC's standards will not bring Small LEC service areas into parity with broadband speeds that are available in California's urban areas, the glide path to the FCC's 25/3 Mbps standard imposed on the Small LECs will enable the widespread applicability of the Staff Proposal's essential broadband speed levels.

AT&T objects to the Staff Proposal's methodology associated with defining essential broadband service levels.[47] AT&T states that the Staff Proposal should not have used a benchmark broadband speed of 20 Mbps and should not have placed a monthly broadband usage level at 1024 GB.[48] Rather, according to AT&T, essential broadband service should be set at some fraction of average usage and speeds.[49] TURN finds AT&T's argument to be short on facts. In the first place, the Staff Proposal *does establish* a speed level that is a fraction of the typical broadband speeds in the state. The Staff Proposal indicates that a substantial majority of Californians subscribe to broadband service at 70 Mbps downstream.[50] As a result, the Staff Proposal's 20 Mbps downstream speed represents 28.6 percent of the 70 Mbps level. Thus, the

[45] Small LECs, September 10, 2019 Comments, pp. 2-3.
[46] Small LECs, September 10, 2019 Comments, p. 3.
[47] AT&T also states that the Commission should consider using an affordability ratio that only considers income, to the exclusion of other essential expenditures. TURN strongly disagrees with this proposal. See AT&T Comments, p. 3.
[48] AT&T, September 10, 2019 Comments, p. 2.
[49] *Id.*
[50] Staff Proposal, p. 14.

Staff Proposal's broadband speed already represents a baseline well below the 50-60 percent electricity baseline to which AT&T points favorably.[51] TURN continues to believe that 20 Mbps is a reasonable starting point that should be adjusted over time.[52]

AT&T also objects to the Staff Proposal's 1024 GB data cap.[53] Without providing any supporting citations, AT&T asserts that 80 percent of broadband usage is "entertainment" video that "inflate" what should be the essential level of service.[54] TURN does not find AT&T's argument to be convincing. It is undoubtedly true that broadband services are used for entertainment video, but they are also used for other activities, such as education, employment, and healthcare that need minimum performance levels and adequate usage allowances. TURN does not believe that the Commission should crimp the bandwidth of essential broadband service to "punish" the use of entertainment services. Restricting data speeds or usage will adversely impact all applications that utilize a broadband facility. AT&T's suggestion that a lower data cap is appropriate for essential broadband service should also be rejected. As TURN discussed in its opening comments, data caps are artificial contrivances used by broadband providers to increase their revenues.[55] Introducing unreasonably low data caps for essential services would not promote the affordability of broadband or any other service. Rather, unreasonably low data caps would make it more likely that a household would face overage charges when the restrictive data cap was exceeded, further cutting into family budgets. TURN urges the Commission to reject AT&T's perspective on data caps and broadband speeds associated with the essential broadband service.

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[51] AT&T, September 10, 2019 Comments, p. 2.
[52] TURN, September 10, 2019 Comments, p. 15.
[53] AT&T, September 10, 2019 Comments, p. 2-3.
[54] *Id.*
[55] TURN, September 10, 2019 Comments, p. 15.

VIII. CONCLUSION

TURN appreciates the opportunity to provide reply comments. TURN respectfully requests that the Commission adopt the aforementioned recommendations and those presented in TURN's opening comments.

Dated: September 20, 2019

Respectfully submitted,

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