

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



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**RESPONSE OF THE UTILITY REFORM NETWORK TO THE FIFTH AMENDED
ASSIGNED COMMISSIONER'S SCOPING MEMO AND RULING**

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I. INTRODUCTION

The Utility Reform Network (“TURN”) hereby responds to the Assigned Commissioner’s Fifth Amended Scoping Memo and Ruling (“Scoping Memo”). TURN welcomes the opportunity to provide comment on the public policies and methodologies to support universal service in rural areas of California.

II. BACKGROUND AND SCOPE

This Fifth Amended Scoping Memo builds on the public policies and overall goals identified in this proceeding when the docket was open in 2011. In 2011, the Commission noted that it was reviewing its high cost fund programs to determine if changes were necessary to “achieve the fundamental statutory goal of enhancing universal service.”¹ Over the course of this proceeding, including in the Phase 1 decision, the Commission and parties have focused on the role of the CHCF-A in ensuring affordable, safe, and reliable communications services, including broadband, in areas where the current independent small local exchange carriers offer service.² In the Fourth Amended Scoping Memo, the Commission stated its intention to look more closely at issues regarding broadband deployment and wireline competition in rural and tribal areas.³

This Scoping Memo reflects movement forward as the Commission continues its analysis to determine how high cost funding and support can be used to meet the universal service needs of customers in the state’s most rural areas. This Fifth Amended Scoping Memo requests

¹ OIR at p. 2

² OIR at p. 13-14 (Small LECs have switched to broadband capable facilities); D.14-12-084 at p. 3 (Commission found that “ensuring that RLEC subscribers have reliable communications services that support robust broadband furthers the universal service goals of the state and federal statutes.”)

³ Fourth Amended Scoping Memo at p. 4, 6 (listing issues re: broadband competition and service measures and broadband in tribal areas).

comment on broad issues of public policy regarding public funding to support infrastructure deployment and upgrades that will allow providers to offer robust and meaningful broadband services and to implement network and infrastructure hardening to promote public safety and network resiliency goals.⁴

TURN supports the work of the Commission to investigate and identify sources of funding to help build redundant and resilient networks that support meaningful voice and broadband options for consumers. As discussed below, there is a very real digital divide that inhibits cohesive economic and social development as this divide separates the geographic and demographic haves from the have nots.

TURN has been an active participant in most Commission proceedings that address communications programs intended to support robust services where communications providers are not meeting universal service objectives.⁵ In its advocacy, TURN works to ensure that funds collected from ratepayers for these programs are used in a fair, efficient, and effective manner that contributes to broader social policy goals and that these funds do not serve as a blank check with little to no accountability as the Commission works to ensure that these programs serve their intended goals.

The Scoping Memo asks sweeping questions about using existing surcharge revenue, collected to support telecommunications cost recovery in high cost areas of the state, as a source of funding to “meet the universal service needs in tribal, rural, low-income, and underserved areas” and to “build capacity for communications services” including voice and broadband and

⁴ Scoping Memo at p. 3-4.

⁵ See, for example, R.11-03-013 (LifeLine program offering discounts on voice and wireless broadband services); R.12-10-012 (CA Advanced Services Fund redesign to implement statutory mandates); R.13-01-010 (Updated California Teleconnect Fund).

to support public safety. As a long-term policy goal, TURN supports the use of funding from the A-Fund and B-Fund, along with other public purpose programs like CASF, to assist in accomplishing these goals, along with other resources that the Commission can bring to bear, such as dedicating staff resources to verify the need to extend service or bolster networks to improve telecommunications facilities and services for public safety.

In the past, other sources of money have also been tapped, such as federal funds under the American Reinvestment and Recovery Act (ARRA), high cost support from Federal Communications Commission Programs, and the United States Department of Agriculture's Rural Utilities Services support. The use of the CHCF-A and B funds for these purposes should be in accordance with the statutory requirements for the funds. As it stands, certificated carriers can draw from the CHCF-B for general support for service in high cost service areas. In practice, these funds have primarily been drawn by AT&T and Frontier/Verizon. TURN believes that many rural tribal areas, and surrounding territory, are indeed high cost areas likely eligible for CHCF-B support.

As discussed below, TURN believes that the Commission can take measured steps in this proceeding to support a limited number of specific and identified projects carried out by eligible providers (not limited to incumbent carriers) and community partners. Actions that the Commission can take now include feasibility studies, monitoring, and reporting to ensure transparency and accomplishment of concrete public benefit. While using money from the CHCF-B may mean that the funds must be used for projects that fit the parameters of the fund, it makes sense to start here because the B-Fund has a large surplus that could be tapped more easily than if the Commission had to develop and fund a new program or significantly expand an

existing program with a budget that is already earmarked.⁶ By allowing B-Fund money to be targeted to specific projects in areas of the state that most lack telecom and data infrastructure and services that are reliable and high-quality, the Commission can analyze and report on these experiences before considering broader, fundamental changes to these programs.

III. THE DIGITAL DIVIDE IN CALIFORNIA

The Fifth Amended Scoping Memo appropriately notes that there are fundamental and significant issues with deficient communications capacity that affect tribal, rural, low-income, and underserved areas. While the workshops held in this docket focused on infrastructure and communication services in tribal areas, the Fifth Amended Scoping Memo also appropriately points to elements of the digital divide that are more generally associated with urban/rural distinctions, low-income populations, and with unserved and underserved areas.

Data regarding the rates of deployment and adoption of broadband services throughout California are important elements of the determination whether current programs such as CHCF-A and CHCF-B are meeting statutory objectives. Sections 709(a), (c), and (d) of California Public Utilities Code state that the Commission should:

- (a) To continue our universal service commitment by assuring the continued affordability and widespread availability of high-quality telecommunications services to all Californians.
- (c) To encourage the development and deployment of new technologies and the equitable provision of services in a way that efficiently meets consumer need and encourages the ubiquitous availability of a wide choice of state-of-the-art services.
- (d) To assist in bridging the “digital divide” by encouraging expanded access to state-of-the-art technologies for rural, inner-city, low-income, and disabled Californians.

⁶ CPUC Internal Audit Unit Report on CHCF-B (April 26, 2017) at https://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/About_Us/Organization/Divisions/Internal_Audit_Unit/AuditReport-CHCF-B.pdf

In addition, Section 275.6(a) of the California Public Utilities Code states that the Commission, when administering CHCF-A, should further “the state's universal service commitment to the continued affordability and widespread availability of safe, reliable, high-quality communications services in rural areas of the state.” Section 276.5 states that the Commission should use CHCF-B to “promote the goals of universal telephone service and to reduce any disparity in the rates charged by those companies.” Similarly, Chapter 851 of Assembly Bill No. 1665 states, in part:

- (a) The Legislature finds and declares both of the following:
 - (1) The availability of high-speed Internet access, referred to generically as “broadband” and including both wired and wireless technologies, is essential 21st century infrastructure for economic competitiveness and quality of life. Economic studies confirm that the use of broadband technologies increases economic productivity as a foundation for increased efficiency in organizational operations and enhanced profitability in business.
 - (2) Broadband infrastructure is also vital to the operation and management of other critical infrastructure, such as energy generation systems and the electrical grid, water supply systems, and public safety and emergency response networks. There is a need for world-class broadband infrastructure throughout California to support these major infrastructure investments, and thereby to protect lives, property, and the environment.
- (b) It is the intent of the Legislature that California be a national leader and globally competitive in the deployment and adoption of broadband technology and in implementing quality universal access for all residents.

Combined, these statutory directives indicate that when administering programs that promote universal service, such as CHCF-A and CHCF-B, the Commission should assess both availability and affordability of voice and broadband, thereby promoting the adoption of advanced telecommunications services.

Commission funding priorities have consistently recognized that today's telecommunications networks are designed to provide both voice and data services. For example, projects funded under the California Rural Telecommunications Infrastructure Grant

Program, Small LECs using money from the CHCF-A, and CASF all support the construction of network facilities capable of supporting both voice and data.⁷ We believe it is reasonable to use CHCF-B fund support to fund the extension, improvement and reliability of service, including equipment such as fiber and advanced radio communications.

There is substantial evidence that market forces are not delivering outcomes that are in the public interest when it comes to broadband deployment and affordability.⁸ Market forces have also not solved the critical problems facing California regarding the provision of reliable and diverse routed communication networks.⁹ TURN urges the Commission to adopt solutions to these public policy concerns that combine the financial resources to support the construction and operation of robust and reliable networks with equally robust and reliable mechanisms to evaluate the needs for funding and ensure that ratepayer monies are utilized in a manner that effectively addresses the problems that need to be solved.

A. The Low-Income Digital Divide Persists

With regard to the elements of the digital divide that are associated with low-income consumers, there is no question that a digital divide persists. Nationwide data from the Pew Research Center clearly shows a significant disparity in technology adoption (smartphones, home broadband, computers, tablets, etc.) between the lowest income category, and those with higher incomes.¹⁰

⁷ AB 140 (Chapter 903, 2001, Strom-Martin); D.03-09-071 (R.03-02-034) (Implementation of the Rural Infrastructure Grant Program).

⁸ CPUC Broadband Adoption Gap Analysis (June 2019)
https://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/UtilitiesIndustries/Communications/Reports_and_Presentations/CDVideoBB/BAGapAnalysis.pdf

⁹ R.18-03-011 Prehearing Conference Transcript, November 20, 2019 at p. 40-43; D.19-08-025 (R.18-03-011) at p. 47-49; R.18-03-011 .

¹⁰ For example, only 56% of individuals with incomes under \$30,000 said that they had home broadband compared with 81% of individuals with incomes between \$30,000 and \$99,000. Pew Research Center, “Lower-income Americans have lower levels of technology adoption,” May 6, 2019.

<https://www.pewresearch.org/fact-tank/2019/05/07/digital-divide-persists-even-as-lower-income->

TURN notes that evidence of broadband redlining in California’s low-income urban areas was presented by the Haas Institute at the University of California Berkeley.¹¹ This study concluded that AT&T, the state’s largest telecommunications provider, needed to expand the deployment of its all-fiber network to more communities on an equitable basis.¹² This same study finds that equity also requires affordability.¹³ Therefore, as the Commission determines its priorities for infrastructure investment, TURN urges the Commission to address both deployment and affordability of the services that will be offered over these new facilities.

B. There is a Significant Urban/Rural Digital Divide

The Commission has collected additional evidence regarding the extent of the digital divide in this ongoing CHCF-A proceeding. TURN believes that it is important to consider this information as it determines the best approach to utilize CHCF-B as an additional source of funds to build capacity for communications services (both voice and broadband), in tribal, rural, low-income and underserved areas.

1. California’s urban areas have access to high-quality broadband

With regard to download and upload speeds offered in California’s urban areas, publicly available data from speed test providers indicate that Californians in urban areas have access to, and are adopting and using, high-speed broadband services far above speeds adopted in rural areas. Speed test data provides useful information as it is based on reports of actual usage, as opposed to advertised speeds and thus reveals information both about speeds available and the

[americans-make-gains-in-tech-adoption/ft_19-05-06_digitaldivideincome_lowerincomeamericanslowertechadoption/](#)

¹¹ *AT&T’s Digital Divide in California, An Analysis of AT&T Fiber Deployment and Wireline Broadband Speeds in California*, Haas Institute for a Fair and Inclusive Society, Policy Brief 2017.

http://haasinstitute.berkeley.edu/sites/default/files/haas_broadband_042417-singles.pdf

¹² *Id.*, p. 19.

¹³ *Id.* (calling for “universal and affordable access to high speed communications services”). See also, Public Utilities Code §709 (emphasis on availability and affordability of advanced services).

speeds adopted by consumers. Information on broadband speeds available and utilized in California are available from the speed test provider Ookla, which uses its own speed tests to collect data directly from consumers. Ookla reports that the average broadband speeds for the entire state of California are 101 Mbps downstream and 26.89 Mbps upstream for 2018.¹⁴ Other city-specific data available from Ookla, based on average upload and download speeds of Ookla tests, is shown in Table 1.¹⁵

Table 1: Ookla Data on California Average Download and Upload Speeds and Fastest Provider by City (2018)

Area	Average Download Speed (Mbps)	Average Upload Speed (Mbps)
California Average	101.00	26.89
Anaheim	96.44	26.14
Bakersfield	79.41	14.94
Chula Vista	117.62	36.41
Fremont	107.21	26.87
Fresno	109.7	14.7
Irvine	124.84	52.29
Long Beach	78.59	38.86
Los Angeles	96.21	21.37
Oakland	111.64	45.01
Riverside	90.11	23.51
Sacramento	108.42	32.57
San Bernardino	95.91	21.55
San Diego	100.32	29.86
San Francisco	131.56	69.28
San Jose	116.56	29.23
Santa Anna	94.35	25.43
Stockton	109.08	17.11

¹⁴ Ookla. <https://www.speedtest.net/reports/united-states/2018/#fixed>

¹⁵ Ookla “Fixed broadband speeds,” “Fastest providers by city, Q2-Q3 2018.” <https://www.speedtest.net/reports/united-states/2018/#fixed>

Urban-oriented service providers feature plans with download speeds in the 150 to 300 Mbps range and have Gigabit services available in some areas.¹⁶ This data is notable as the speeds shown are well in excess of the speeds being used by, or even available to, most rural customers, as discussed below. From a public policy perspective, the Commission and the Legislature have determined that advancement of their economic and social policy goals require that all areas of California have access to advanced telecommunications services.¹⁷

There are significant challenges to serving California's most rural areas, both for broadband and voice services. Due to a combination of topography, vegetation and sparse population it may not be possible to deliver the highest broadband speeds available to urban and suburban customers to customers in some areas. However, it is also likely that a focused, coordinated effort can improve existing data service, extend data service to more customers and improve network reliability. For example, the Digital 299 fiber optic project by Inyo Networks offers the potential to bolster reliability by providing paths for diverse routing (for voice, wireless, broadcasting, Public Safety Answering Points), and to improve the availability of broadband service by serving as a backbone that can support data transport and provide opportunities for tribal and rural ISPs.¹⁸ As discussed below, a CHCF-B project could leverage the Inyo Networks effort by providing tribes and smaller communities along the route the ability to connect a local network to the previously unavailable fiber back-bone. The CHCF-B monies

¹⁶ Based on a review of carrier offerings for California addresses. The midpoint of Comcast's broadband menu is 300 Mbps, with speeds listed ranging from 25 Mbps to 1 Gbps. For Spectrum, plans begin at 200 Mbps. For Cox, the midpoint of the broadband menu is 150 Mbps, with speeds ranging from 10 Mbps to 940 Mbps. AT&T appears to feature a single maximum speed in areas where it relies on DSL, such as 50 or 100 Mbps. Where fiber is available, speeds such as 50 Mbps, 300 Mbps, and 1 Gbps are featured.

¹⁷ D.14-12-084; California Public Utilities Code, §709(d) & (e). See also Chapter 851 of Assembly Bill No. 1665.

¹⁸ <https://www.digital299.com/> ; https://www.cpuc.ca.gov/environment/info/transcon/digital_299_project/

are part of a bigger picture that can be leveraged to improve network reliability and the services available to customers.

2. Consumers in California's rural areas do not have reasonable access to affordable and high-quality broadband

Consumers residing in California's rural areas, such as those living in independent Small LEC service territory, are still lacking data speeds that are available in urban areas. The 2018 CASF report notes that only 41.3% of rural households in California have service available at download speeds of 100 Mbps or greater.¹⁹ The Communication Division's December 2018 report on retail communications services in California also notes that a significant digital divide exists in California, with the availability of advanced services that meet the FCC definition of broadband in rural areas substantially below urban areas.²⁰

The Commission must address the fact that consumers residing in California's urban areas have access to higher quality broadband services at lower service plan prices and unit prices, as compared to the service areas of rural carriers.²¹ TURN has recently reviewed the offerings of urban-oriented broadband ISPs and finds that lower-speed offerings, such as those still widely subscribed to by rural customers, are no longer marketed in urban areas.²² TURN's review of rates offered in urban areas by California broadband providers AT&T, Comcast, Cox, Frontier, Spectrum, SuddenLink, and Wave revealed prices for broadband service offers ranging between \$19.99 and \$299.99 per month, with a median price of \$49.95 per month.²³ Broadband

¹⁹ CPUC, CASF Annual Report, April 2019, p. 2.

²⁰ California Public Utilities Commission, Communications Division. "Retail Communications Services in California. Report of the Communications Division Pursuant to Ordering Paragraph 3 of Decision 16-12-025 Analyzing the California Telecommunications Market," December 2018, p. 6.

²¹ For this discussion, unit prices for broadband services reflect "dollars per Mbps" (\$/Mbps) of download speed.

²² Roycroft Direct Testimony, R.11-11-007, November 15, 2019, pp. 28-72.

²³ TURN's review of urban service provider rates revealed state-wide pricing strategies, with similar offers and prices available in multiple locations throughout the state. To conduct this review, TURN

unit prices, measured in dollars per Mbps of download speed (\$/Mbps), included in offers from major broadband providers which serve urban areas average \$0.78/Mbps.²⁴ On a unit price basis, these prices are generally much lower than prices offered by rural carriers.²⁵ TURN's study of service offers among the CHCF-A companies found that the median and average broadband prices were \$79.95 and \$114.88 per month, respectively, with the median unit price for broadband being \$3.50 per Mbps per month—over ten times the unit price in urban areas.²⁶ While these rate disparities may have roots in the very real differences between the economies of scope and scale between urban and rural carriers, along with the high cost of services in many rural areas, it is these disparities that the Commission has a statutory mandate to address.

3. Data from the Small LECs service areas confirms the extent of the urban/rural digital divide

Table 2 shows aggregate data from Small LEC service areas for 2018, which indicates that about 93.7 percent of residential customers in the Small LECs' service areas now have broadband service available of 10/1 Mbps, with 54.2 percent having service availability at the FCC's 25/3 Mbps standard. However, among the Small LECs, substantial differences are evident for the smaller companies, as compared to the larger companies. Dropping the three largest companies from the analysis results in only 26.6 percent of customers of the other seven Small

evaluated multiple service offers from service providers in various locations in the state. Roycroft Direct Testimony in R.11-11-007, November 15, 2019, pp. 32-33.

²⁴ BroadbandNow, which collects price information from publicly available sources reports \$/Mbps prices of \$0.04 Mbps for fiber-based, and \$0.27 for cable broadband, service offers in California.

BroadbandNow does not report a DSL unit price for California.

<https://broadbandnow.com/research/digital-divide-broadband-pricing-state-zip-income-2019>

²⁵ See Roycroft Direct Testimony in R.11-11-007, November 15, 2019, p. 33. It appears that larger carriers such as AT&T and Frontier use their economies of scale to offer state-wide pricing in most cases, making it difficult to use their data in an analysis of the urban/rural digital divide.

²⁶ See Roycroft Direct Testimony in R.11-11-007, November 15, 2019, pp. 51-52.

LECs with service availability at the 25/3 Mbps standard.²⁷ In either case, however, the Small LECs significantly lag behind broadband performance in urban areas.

Table 2: Customer Access to Broadband Standard Speeds

	At Least 6/1.5 Mbps (State Served Standard)		At Least 10/1 Mbps		FCC CAF—At Least 25/3 Mbps		Does not meet State Served Status	
	Number	%	Number	%	Number	%	Number	%
Small LECs Total	64,874	96.78%	62,825	93.72%	36,302	54.16%	2,158	3.22%

4. The Digital Divide can only be closed when consumers adopt high-quality broadband

In its recent evaluation of broadband deployment and adoption in the Small LECs' service areas, TURN found that the average download speed for plans used by Small LEC customers is 9.3 Mbps and the median download speed is 6 Mbps.²⁸ Upload speeds also show a substantial Digital Divide. On average, subscribers in Small LEC service areas use upload speeds of 1.9 Mbps. The median upload speed purchased by Small LEC customers is 0.8 Mbps.²⁹ This data reveals market failure and a significant digital divide. Small LECs indicate that 74.2 percent of their broadband subscribers purchase services *below* speeds of 10/1 Mbps, and 44.2 percent of Small LEC broadband subscribers purchase broadband services below the state minimum standard of 6/1 Mbps. *An astounding 96.6 percent of Small LEC broadband subscribers purchase broadband at speeds below the FCC's long-standing, and now dated, 25/3 Mbps standard.* Table 3 summarizes broadband adoption of Small LEC broadband services.³⁰

²⁷ See Roycroft Direct Testimony in R.11-11-007, November 15, 2019, p. 39.

²⁸ See Roycroft Direct Testimony in R.11-11-007, November 15, 2019, p. 55.

²⁹ See Roycroft Direct Testimony in R.11-11-007, November 15, 2019, p. 56.

³⁰ See Roycroft Direct Testimony in R.11-11-007, November 15, 2019, p. 58..

Table 3: Small LEC broadband subscriber data speeds

Broadband speed	Percent of Small LEC broadband customers subscribing at speeds below the standard.
Below the 6/1 Mbps standard.	44.2%
Below the 10/1 Mbps standard.	74.2%
Below the 25/3 Mbps standard.	96.6%

Customers who purchase broadband services from the Small LECs are on the wrong side of the digital divide. The speeds utilized by almost all Small LEC broadband customers do not meet the current definition of broadband. As noted by the FCC, to take full advantage of the benefits of broadband, services must be capable of delivering speeds sufficient to support multiple devices in a household.³¹ This outcome is not apparent among the broadband customers of the Small LECs. The FCC's assessment was made in early 2015, based on a record that was built in 2014. In the intervening five years, consumer demand for broadband has outstripped the 25/3 Mbps standard. As was discussed earlier, consumers in California's urban areas subscribe to broadband services at speeds well in excess of the 25/3 Mbps standard. While TURN has presented data focused on Small LECs, the Commission's broadband mapping also shows that consumers and businesses in rural service areas have fallen behind the rest of the state by a wide margin.³²

C. The Digital Divide in AT&T's Non-urban Service Areas

³¹ *In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 14-126, 2015 Broadband Progress Report and Notice of Inquiry on Immediate Action to Accelerate Deployment, February 4, 2015, ¶45.

³² CPUC Broadband Adoption Gap Analysis (June 2019)
https://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/UtilitiesIndustries/Communications/Reports_and_Presentations/CDVideoBB/BAGapAnalysis.pdf

The Commission must learn the full extent of the digital divide in AT&T's rural service areas, especially areas where AT&T is the sole provider of wireline broadband, or where there is no wireline broadband available. Data from the 2017 Haas broadband study discussed above also points to problems similar to those observed in Small LEC service areas in the non-urban areas of AT&T's California service area.³³ Table 4 summarizes data from the Haas broadband study.

Table 4: Digital Divide in AT&T California's non-urban service areas

County	Number of households without access to 6/1 Mbps broadband	Percent of Households without access to 6/1 Mbps broadband	Number of households without access to 25/3 Mbps download	Percent of households without access to 25/3 Mbps broadband
Amador	2,837	33.1%	8,569	100%
Butte	41,938	61.2%	68,516	100%
Calaveras	8,076	58.1%	13,906	100%
El Dorado	24,308	37.0%	50,359	76.8%
Humboldt	18,049	43.4%	41,561	100%
Lake	10,589	41.1%	25,763	100%
Mendocino	9,637	38.8%	24,833	100%
Nevada	18,480	46.5%	39,520	99.4%
San Luis Obispo	42,851	45.6%	93,897	100%
Santa Cruz	31,845	34.6%	69,393	75.4%
Shasta	24,319	52.2%	46,625	100%
Tehama	6,515	38.5%	16,927	100%
Tuolumne	8,098	55.9%	14,482	100%

Table 4 shows that as of 2016, there were substantial broadband deployment deficiencies in the non-urban areas of AT&T's California service territory. The extent to which this situation has changed, if at all, must be established before the Commission devotes CHCF-B resources in

³³ Data shown in Table 6 appears on page 14 of the Haas study. *AT&T's Digital Divide in California, An Analysis of AT&T Fiber Deployment and Wireline Broadband Speeds in California*, Haas Institute for a Fair and Inclusive Society, Policy Brief 2017.
http://haasinstitute.berkeley.edu/sites/default/files/haas_broadband_042417-singles.pdf

AT&T's service area. To the extent AT&T and Frontier have not kept up their investments in networks in rural parts of their service territory, the Commission has the authority to direct CHCF-B resources to address the resulting disparities.

D. The Digital Divide Results in Lack of Network Redundancy and Resiliency in Rural and Low Income Areas

An article in the October 30, 2019 *Wall Street Journal* summarized California's recent experience with the reliability of the state's communications networks:

Power shutdowns in the state meant to prevent further fire risk have cut power to some cell towers, as well as to cable providers that sell home voice services along with television programming and internet access. The shutdowns have left hundreds of thousands of customers cut off from emergency alerts, loved ones and in some cases, access to 911.

While traditional copper landline phones typically continue working during power outages, newer internet-based voice-calling services that are cheaper for providers to offer and maintain don't. *California's public-utility commission doesn't have rules that require service providers to have backup power for voice-over-internet service, wireless service or wireline customers on traditional telephone systems.*³⁴

As noted in this article, the lack of backup power rules and requirements for diverse routing is a stumbling block to establishing reliable communications networks in California. The starting point for this Commission's efforts to build network redundancy and resiliency is to first establish rules that govern network performance when grid power is shut down, or when facilities are damaged. Absent standards and sufficient practices, funneling money to achieve network improvements that may or may not provide reasonable performance during grid-power outages is not a reasonable path forward. These issues are being addressed in R. 18-03-011 where TURN is an active party.

³⁴ "In California Fires, Power Outages Knock Out Modern Phones, State's rules don't require backup power for landline or cellphone service, leaving many customers cut off," *Wall Street Journal*, October 30, 2019, emphasis added. <https://www.wsj.com/articles/in-california-fires-power-outages-knock-out-modern-phones-11572459771>

Furthermore, standards associated with network resiliency also require a thorough evaluation of whether 20th century network design and maintenance approaches are sufficient for the much warmer and fire-prone 21st century. As it determines how to use CHCF-B monies to support the building of network redundancy and resiliency for public safety purposes, the Commission must also evaluate principles of network design and establish standards and/or best practices that will then provide a foundation for the actual deployment of robust communications networks.

IV. THE COMMISSION'S WORK IN TRIBAL AREAS WILL HELP MITIGATE IMPACTS FROM THE DIGITAL DIVIDE

There are over 170 Native American tribes in California.³⁵ Many of them are in rural and high cost areas of the state and struggle to obtain safe and reliable communications services including both voice and broadband to their communities. Even tribes near denser suburban population centers often lack access to reliable, and affordable, communications capabilities. As noted in the Scoping Memo, the Commission held three workshops in tribal areas to take public comment and to collaborate on solutions to issues specific to the digital divide on tribal lands.³⁶ TURN attended each of these workshops and we agree the Commission should seek solutions to bridge the digital divide on tribal lands.

A. Commission Workshops

While the three workshops took place in geographically different areas, the experience of the tribal communities were similar: tribal representatives described the lack of access to reliable

³⁵ Commission Tribal Consultation Policy, April 26, 2018, p. 1

³⁶ Scoping Memo at p. 3.

voice and data telecommunications services on tribal lands.³⁷ Examples of this lack of access include instances where a provider offers service in territory surrounding tribal land, but the service stops at tribal land boundaries. Some tribes have asked providers to extend their networks to tribal lands, but that has yet to happen. Some providers have rights-of-way that go through tribal lands, yet those providers do not offer the ability to interconnect with fiber that utilizes the rights-of-way and do not offer service to the communities that the fiber passes. In the absence of alternatives, some tribes are considering creating their own telecommunications networks in order to serve their communities and expressed interest in potentially utilizing the CHCF-B Fund as one means of establishing telecommunications services. TURN encourages these tribal representatives to become involved in this proceeding so that their voices and concerns may be heard and addressed.

B. Input From Tribal Representatives

Subsequent to the workshops, TURN has discussed these issues with three technology and policy experts from different tribal areas, located in Southern California and the Northwest part of the state. They have firsthand experience with the frustrations of being unserved and underserved, even when the surrounding area is served by the incumbent carrier. In these comments, TURN summarizes the information obtained from tribal representatives so that their concerns and perspectives are in the record. TURN is not endorsing these comments except to note that many of their comments reinforce the discussion above regarding the urban/rural and low income digital divide and to urge the Commission to learn more from their participation. We understand that the Commission is in the early phase of exploring options for improving

³⁷ The workshops took place on September 16, 2019 in Tuolumne, on September 30, 2019 in Blue Lake, and on October 11, 2019 in Temecula. As of the date of this filing, the workshop reports have not yet been published.

communications in tribal and other rural areas and obtained this information to inform our understanding of the issues and the discussion before the Commission. We are also working with these tribes to become a party to the proceeding so they can speak directly to their unique circumstances.

Matthew Rantanen, Director of Technology for the Southern California Tribal Chairman's Association and the Tribal Digital Village Network, described his frustration when a communications provider stops at the border of a tribal nation and fails to work with the tribe to deploy even just a few additional miles of critical infrastructure to serve the tribal area. Further, providers that are willing to serve have installed outdated technology such as DSL, or chosen to deploy other technologies such as satellite, that are not appropriate for the unique circumstances of an area and cannot meet the bare minimum standards for adequate broadband, much less provide full bandwidth services. He pointed out that there are other technologies that would provide valuable broadband and communications capabilities for tribal members throughout rural (and some not so rural) areas.

Jessica Engle is the Director of Information Technology for the Yurok Tribe, with lands located in Humboldt and Del Norte Counties along the coast and inland. She states that many parts of the Reservation, especially the middle of the area, have no communications capability. Other parts of the Reservation suffer from “barely there” cell phone coverage and limited POTS service from Frontier, that the tribe attempts to disseminate through a wireless repeater network to parts of the Reservation. While there have been promises by the incumbents and wireless carriers³⁸ to improve services to the Yurok Tribe, Ms. Engle is convinced that at this point they

³⁸ TURN understands that the Yurok have received prior grants that entailed working with Verizon (now Frontier) to deploy improved services on their Reservation. Moreover, the Yurok and the Karuk Tribes coordinated on a CASF grant in 2013 to support the Klamath River Broadband Initiative, which would

have to take matters into their own hands because they are desperate. Their reservation has difficult terrain and low population density. As a non-gaming tribe, mostly supported by grants, it has been difficult to dedicate the resources to build out sufficient infrastructure.

TURN also spoke to Jana Ganion from the Blue Lake Rancheria (“BLR”), also in the Northwest part of California. Similar to the Southern California and Yurok tribes, BLR is using its limited communications resources to serve its members, but the incumbent LEC and wireless infrastructure in surrounding communities is not robust and reliable, which in turn creates a barrier to developing advanced and resilient communications services on the tribal land.

BLR relies on its own utility authority to manage and deliver utility services, including communications, to its residents and businesses. However, even with the work that it has done to bolster its own infrastructure, BLR still characterizes its area as a “digital desert” and the “end of the line” for electricity and communications infrastructure. As a result, BLR is vulnerable to both electricity and communications outages and recognizes, first hand, the interdependence and fragility of the state’s public purpose networks.

As BLR reaches out to partners for programs to improve economic development, educational opportunities, workforce partnerships, and emergency coordination, it recognizes that its ability to interconnect is limited by its own communications capabilities and those of the surrounding communities. Like the Yurok, BLR has worked closely with other groups and communications providers, and has been promised improved services time and time again. But BLR also realizes that it must take matters into its own hands to build infrastructure that will

cover just a portion of the Yurok Reservation (See, T-17418 (10/17/2013)). While TURN is not directly involved in these projects, it appears that neither of them have been completed and the CASF grant is on hold pending project review. TURN encourages the Commission to review this project for lessons learned to incorporate into the work to use additional monies to support broadband efforts in these areas. <https://www.cpuc.ca.gov/environment/info/esa/klamath/index.html>

bring advanced services and network redundancy and resiliency for emergency services, despite the challenges of a rural and wooded service territory and other unique communications needs. BLR also recognizes the need to develop resources to take advantage of projects that are being built to improve services in surrounding communities, such as the Digital 299 project that is slated to serve the Redwood Coast within the next few years.³⁹

All of these representatives would welcome additional funding to improve telecommunications networks and services, and extend service to unserved areas. They agree that a funding program should be designed to allow tribes, or other rural fund recipients, to decide what technology would be most effective to deliver meaningful speeds and reliable service and to help the tribes to proactively pursue opportunities to interconnect with new projects in the area. Yet, each also raised concerns that requirements for funding should not be so onerous as to prevent tribes from participating. Mr. Rantanen cited requirements to obtain a CPCN or ETC status or offer voice services as obstacles. He suggests CASF grants could be used as a model for tribal funding because those grants are more broadly available and do not have some of the significant regulatory requirements that would apply when an entity is a CPCN holder. Ms. Ganion noted her tribe's experience with operating a tribal utility authority that she believes could serve as a model.

V. THERE IS COMMISSION PRECEDENT FOR PUBLIC FUNDING OF INFRASTRUCTURE IN RURAL AREAS

There is substantial Commission precedent for moving forward with the use of ratepayer surcharge revenues to support investments in critical network infrastructure to achieve the state's

³⁹ The Digital 299 project is funded, in part, by CASF and managed by Inyo Networks. <https://www.digital299.com> BLR is concerned that without additional resources to facilitate interconnection with this unique high speed middle mile facility, the opportunity will, quite literally, pass them by.

universal service goals. The Commission acknowledged that its high cost fund programs are critical to achieving its commitment to making affordable telecommunications services available to all Californians and to require that all carriers contribute to this effort in an “equitable and explicit manner.”⁴⁰

A. California High Cost Fund A

Up to this point, the focus of this proceeding has been on the structure, processes, and procedures of the CHCF-A. The A-Fund represents a legislative and regulatory mechanism to provide subsidy dollars to independent Small LECs, “in furtherance of the state’s universal service commitment to the continued affordability and widespread availability of safe, reliable, high-quality communications services in rural areas of the state.”⁴¹ The statute sets a framework and specific criteria that allow carriers to receive A-Fund dollars. Carriers must be under rate-of-return regulation, qualify as a “rural telephone company,” and serve as a carrier of last resort in their entire service territories.⁴² The funding serves to supplement the independent Small LEC’s revenue, allowing the Commission to adopt affordable end user rates while the carrier has the opportunity to earn its full revenue requirement.

Directly relevant to the issues raised by the Scoping Memo, as explained above, while TURN believes that A Fund subsidy money already contributes toward the accomplishment of the Commission’s goals of meeting universal service needs in Small LEC territory, there is still much work to be done. CHCF-A funding is designed to support investments in broadband capable networks and robust maintenance and hardening of Small LEC networks.⁴³ While other

⁴⁰ D.07-09-020 at p. 7.

⁴¹ Public Utilities Code § 275.6 (a).

⁴² Public Utilities Code §275.6(d).

⁴³ In this docket, TURN has urged the Commission to find that A-Fund subsidy money is supporting a network that offers both voice and broadband services and that this fact should be recognized by an

tracks of this proceeding are currently scrutinizing the use of these funds by the Small LECs, it is undeniable that by design and intent, the A-Fund money can be used to build capacity for voice and broadband communications services and to ensure network redundancy and resiliency in tribal, rural, low-income and underserved areas, if the receiving entity qualifies under the statute.

TURN urges the Commission to work with the Small LECs to encourage partnerships and collaboration between the Small LECs and other entities that may have projects that would benefit from A-Fund money. In part because the A-Fund statute has specific criteria and structure for the program, any attempt to broaden out the types of recipients would likely need legislative changes. Yet, as discussed above, there is a well-documented need for additional investment in infrastructure in Small LEC areas.⁴⁴ TURN supports the continued use of A-Fund money for this purpose, with strict oversight, transparency and accountability by the Commission and the Small LECs for the money.

B. California High Cost Fund B

The CHCF-B is also intended to “promote the goals of universal telephone service and to reduce any disparity in the rates charged by” companies serving high cost areas of the state where, “the cost of providing services exceeds rates charged by providers.”⁴⁵ In contrast to the A-Fund, the B-Fund does not require recipients of the money to be under rate-of-return regulation or to serve as a COLR in the area. The statute leaves much of the design of the program and criteria for funding to the discretion of the Commission.

imputation requirement of broadband revenue. D.14-12-084 at p. 18-20, Roycroft Direct Testimony, R.11-11-007, November 15, 2019.

⁴⁴ See, also, Roycroft Direct Testimony, R.11-11-007, November 15, 2019, pp. 28-71.

⁴⁵ Public Utilities Code §276.5 (a).

The Commission has historically required recipients of this money to serve as COLRs in their serving areas and imposed criteria that providing funding only to those carriers that served areas of the state where the per-customer cost to serve exceeded \$36.⁴⁶ These Commission-imposed rules, that were significantly revised in 2007, limit disbursements of the funds. As of 2017, only 3 carriers receive funds from this program serving only 106,734 lines and resulting in an annual program budget of approximately \$22 million.⁴⁷ Based on a 2017 audit report, the B-Fund appears to have a balance of approximately \$161 million, much of which is currently “on loan” to other Funds.⁴⁸

In 2006 and 2007 the Commission conducted a detailed examination of the B-Fund program in light concerns regarding competitive neutrality and the growing need to ensure that investments are used to create broadband capable networks.⁴⁹ In 2007, the Commission reduced the surcharge and the subsidy payments to carriers from the B-Fund, and created the California Advanced Services Fund as a tool to fund broadband facilities in unserved and underserved areas of California.⁵⁰ The Commission should take the lessons learned from the development and implementation of CASF to guide its work to develop high-quality, robust, and extensive network infrastructure to ensure “the widespread availability of high-quality telecommunications

⁴⁶ 1996 Cal. PUC LEXIS 1046 (D.96-10-066) at FOF 148, 173, COL 100, Appendix B (Universal Service Rules and Objectives) at Section 6. D. 3.; D.07-09-020 at COL 6, 17, OP 1 (updated high cost benchmark and reaffirming COLR obligation).

⁴⁷ Communications Division CHCF-B Fact Sheet (April 2018) at <https://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/UtilitiesIndustries/Communications/ServiceProviderInfo/CDSvcQualETC/CHCF-B%20Fact%20Sheet.pdf>

⁴⁸ CPUC Internal Audit Unit Report on CHCF-B (April 26, 2017) at https://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/About_Us/Organization/Divisions/Internal_Audit_Unit/AuditReport-CHCF-B.pdf

⁴⁹ D.07-09-020 (R.06-06-028).

⁵⁰ D.07-09-020 (R.06-06-028) The Commission made further changes in 2014 to update the calculations and analysis of high-cost eligible areas of the state. D.14-06-008 (R.09-06-019).

services to all Californians.”⁵¹ Similar to its work on the A-Fund, TURN supports the fair, efficient, and effective use of these ratepayer funds, currently earmarked to support incumbent operations in high cost areas, to support projects that move the Commission toward achieving its universal service goals, along with the appropriate safeguards to ensure transparency and accountability for the funding.

C. Other Funds

Originally developed as part of the B-Fund, the Commission also uses the California Advanced Services Fund, to provide grants for projects that build infrastructure in unserved and underserved areas to advance universal goals through broadband capable facilities. The program requires extensive application material and reporting requirements, but provides opportunity for funding a wide variety of projects. As discussed below, while the CASF currently has statutory authority to develop the funding mechanisms and accounts, the Commission found that it did not need statutory authority to develop, fund and implement CASF.

Another example of precedent for public funding of these projects is the Rural Infrastructure Grant Program. In 2001, the Legislature authorized money from both the A-Fund and the B-Fund, to be used at the Commission’s discretion, to “aid in the establishment of telecommunications service” in unserved areas.⁵² Commission and industry representatives sat on a working group to evaluate applications from community based organizations in rural areas to receive funds to either build new infrastructure or partner with a carrier to purchase discounted services once the infrastructure was built and serving that community. The program was designed to distribute approximately \$50 million in grants over five years to address what the

⁵¹ D.07-12-054 at p. 1

⁵² AB 140 (Chapter 903, 2001, Strom-Martin).

Legislature called the “infrastructure gap” between low income rural communities and more developed areas of the state.⁵³ The Legislature noted that this type of funding program is consistent with, and critical to, supporting the state’s universal service goals and found that the Commission’s existing high cost funds were appropriate sources of money for this program. As an example, the Tule River and the Yurok tribes each received grants, totaling over \$3 million to fund communications infrastructure.⁵⁴

Another example of public funding of programs to meet universal service goals is the Digital Divide Grant Program funded by a percentage of the lease payments from wireless carriers with cell towers on state property.⁵⁵ This Program was created in 2016 to fund nonprofit organizations providing community technology programs to advance digital literacy and training. The statute requires the commission to wait until the program had at least \$500,000 in seed funding. While the status of this program is unclear and not a direct example of infrastructure funding per se, this program is another example of public funding for broadband and technology related policies.

VI. THERE IS LEGISLATIVE INTENT AND COMMISSION PRECEDENT FOR APPLICATION OF THE B-FUND TO MEET UNIVERSAL SERVICE NEEDS

In 1996, the Commission adopted the B-Fund to create an explicit high cost subsidy mechanism in the face of market competition.⁵⁶ The Legislature previously adopted Public Utilities Code Section 739.3 to support efficient administration of universal service and public

⁵³ Assembly Committee on Utilities & Commerce Analysis of AB140, April 2, 2001 at p. 3 <http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml>

⁵⁴ T-16846 (2004) and T-16944 (2005); <https://seuc.senate.ca.gov/sites/seuc.senate.ca.gov/files/02-16-10RTI.pdf>

⁵⁵ Pub Utilities Code §280.5

⁵⁶ 1996 Cal. PUC LEXIS 1046 (D.96-10-066) Appendix B (Universal Service Rules and Objectives) at Section 6. D.

purpose program funds. While the statute has been revised over time, it continues to provide the Commission broad authority to administer the program under its “direction, control, and approval.”⁵⁷ Unlike the A-Fund authorizing statute, Sections 276 and 276.5 provide little prescriptive language or specific criteria for carrier recipients or application of the funding except that the surcharge funding shall “reasonably equal the value of the benefits” for the Commission’s universal service goals and shall establish a “fair and equitable local rate support structure” that is competitively neutral and reduces rate disparity between urban and rural areas. The statute also specifies that the funding must be provided to telephone corporations, as that term is defined in PU Code Section 234, but does not limit distribution to any particular type of telephone corporation such as a COLR, wireline provider, or incumbent. These broad-brush goals and framework leave the Commission with discretion to design a program that is flexible and addresses current priorities and goals.

TURN urges the Commission to review its policy rationale and legal analysis supporting the development of the CASF funding in 2007 as instructive and analogous. In 2007, the Commission adopted a sweeping decision that revised the CHCF-B structure, mechanisms, and application and preliminarily concluded that it would develop a separate funding program— the CASF— through the B-Fund program. The Commission found that competition and market forces had not provided sufficient motivation for competitors and incumbents to serve high cost areas of the state with robust broadband and updated network facilities, thus making public funding of these infrastructure projects necessary.⁵⁸ Therefore, the Commission intended that this new element of the B-Fund would satisfy the Commission’s statutory mandate to “encourage

⁵⁷ Public Utilities Code §276 (a).

⁵⁸ D.07-09-020 at p. 34; See also, D.16-12-025 (I.15-11-007) at p. 161 (acknowledging need for public purpose programs, including high cost funding, to fill several gaps in the market).

the development of new technologies” through limited funding of broadband infrastructure costs in high cost areas to not only bring services to these areas but to meet the mandate of the B-Fund program of minimizing rate disparity between high cost and urban areas and to meet other universal service goals.⁵⁹

The Commission further found that the migration of essential communications services to broadband, including voice services, meant that it would be “imprudent” to only support legacy copper networks of the ILECs in hopes that such funding would be sufficient for the Commission to meet its statutory mandates.⁶⁰ Relying on an extensive legislative analysis that is still relevant over a decade later, the Commission found that existing statutory mandates supported the use of B-Fund money to fund projects that incorporated new technologies to meet universal service goals and reduce rate disparity for all communications services.⁶¹ This analysis directly supports many of the proposals in the Fifth Amended Scoping Memo that direct B-Fund money to be used for target projects after feasibility studies and review to support universal goals and public safety network investment and hardening.

Finally, while the Commission went to the Legislature to establish a separate fund, “In order to achieve the most efficient administrative mechanism and appropriate fiscal controls,” the Commission continued to state that it did not need statutory authority to update its existing universal service programs.⁶² It found it had authority to shift some B-Fund money into broadband projects in light of the shift in technologies used to offer basic services and that it

⁵⁹ D.07-09-020 at p .11.

⁶⁰ D.07-09-020 at p. 60.

⁶¹ D.07-09-020 at p. 65, 69 (The Commission further found that use of the B-Fund money to fund broadband projects required that “basic telephone services is one of the components of any broadband service.”).

⁶² D.07-12-054 at pp. 3, 13.

considered its effort to fund these projects to be a “complement” to the B-Fund and its other public purpose programs.⁶³ Indeed, the Commission found that funding only incumbent carriers and infrastructure that supported outdated technologies in limited areas of the state was potentially *contributing* to the digital divide in California, and that it must use these funds to support new projects to mitigate the impacts of the disparity between urban and rural areas.⁶⁴ However, as the Commission recognized in 2009 when it further broadened the criteria for funding through CASF, the statute specifies that the B-Fund monies must go to telephone corporations. For example, the Karuk Tribe became a certificated telephone corporation when it applied for money as part of the Rural Infrastructure Grant using money from the A-Fund and B-Fund.⁶⁵ Indeed, there are benefits to becoming a telephone corporation and holding a CPCN or Wireless Registration, which provides more statutory authority to access rights of way, poles and conduits, facilitates mutual interconnection and traffic exchange, allows receipt of numbering resources, and participation in Commission programs.

However, TURN understands that many potential recipients of these funds are smaller entities with few resources, thus a requirement to become a telephone corporation could discourage participation in the program. In 2007 and 2008, while CASF was governed by the B-Fund statute, the Commission was already considering criteria that would allow entities that are not telephone corporations under the Public Utilities Code to receive funding, including where “regulated entities do not make use of the CASF Funds.”⁶⁶ While the Commission required

⁶³ D.07-12-054 at FOF 5

⁶⁴ D.07-12-054 at p. 14; D.09-07-020 (CASF New Filing Plan)

⁶⁵ T-17418 (2013) <https://www.cpuc.ca.gov/environment/info/esa/klamath/index.html>

⁶⁶ D.07-09-020 at p. 72; See, T.17143 at p. 19 (adopting application requirements and acknowledging that under certain circumstances funding could be awarded to entities without CPCNs). As discussed above, the B-Fund has very limited distribution and a large surplus.

recipients to hold a CPCN or Wireless Identification Registration it did so to “maximize the effectiveness of Commission oversight” and “in order to ensure that the Commission has jurisdiction to control against waste, fraud and abuse in our administration of the CASF program,”⁶⁷ and it subsequently dropped this requirement after CASF was given its own authorizing statute.⁶⁸ In the face of challenges by incumbent carriers, the Commission has argued that it has clear authority to update or revise program requirements to meet changing circumstances and current needs, including changes to eligible recipient criteria. Indeed, while the B-Fund statute specifies that funding go to telephone corporations, the more general authorizing statute for the Commission’s public purpose programs, Public Utilities Code Section 270, does not specify that these funds must go to telephone corporations.⁶⁹

Although the Commission has significant authority and discretion over the B-Fund, if the Commission’s intent is to broaden the criteria for entities to receive B-Fund money, it would have to achieve changes in the statutory language to eliminate this requirement. Yet, time is of the essence for the Commission to accomplish its short term goals. Many tribal nations and other rural communities have been promised additional investment and improved network infrastructure for decades. Now is the time, as public safety and network resilience are clear priorities, that rural and low income communities should be given the tools to do the job themselves. In the short term, TURN urges the Commission to move forward on a pilot program basis in this docket with entities that are willing to receive Commission authority or that could

⁶⁷ D.07-12-054 at p. 34-35.

⁶⁸ D.14-02-018, implementing SB740 and eliminating requirement that CASF only fund telephone corporations.

⁶⁹ In 2009 and again in 2013, the Legislature stepped in to design CASF to require recipients are telecommunications carriers. Only because of that affirmative language, did the Commission agree that it needed additional legislative action to “undo” that requirement. In 2014, the Commission broadened out its application criteria to include other types of entities, along with necessary criteria to ensure these entities were financially and technically qualified. D.14-02-018 at p. 35.

work with the Commission to satisfy the CPCN requirements in alternative ways, perhaps through partnerships or agreements with other entities.⁷⁰ At the same time, the Commission should consider moving forward with efforts to revise the statute to allow the millions of dollars of ratepayer surcharge revenue that is currently locked away in the B-Fund to be used to achieve the statutory goals for which it was collected.

In addition, taking into account the examination of network resiliency and reliability in Docket R. 18-03-011, the Commission should also consider using its authority to require carrier recipients of B-Fund draws to undertake specific projects designed to improve network reliability. This could include deployment of back-up power and diverse routing. Nothing in the statute precludes the Commission from ensuring that high cost fund draws are used to support improving networks and enhancing reliability.

The Commission has also determined that it has authority to collect and distribute ratepayer surcharge funding to meet universal service goals beyond the specific authorizing statutes in Public Utilities Code Section 270 et seq. The Legislature has provided additional authority and mandates to the Commission in Section 709 and 701. These provisions empower the Commission to continue to fund projects aimed at observing the state's universal service policies, bridging the digital divide, supervising and regulating public utilities, and meeting other Legislative objectives such as economic growth and job creation.⁷¹ These directives are not to be taken lightly merely because they do not fall under a specific public purpose program, but rather

⁷⁰ For example, in D.07-12-054, p. 35 the Commission noted that funding could be provided to a consortium as long as the lead financial entity was a telephone corporation with a CPCN or Wireless Registration.

⁷¹ D.07-09-020 at p. 29; 709 (c) (d); D.07-12-054 at p. 15-17.

should be seen as critical direction by the Legislature to ensure that all available funding is used for these specific purposes.

VII. ISSUES TO CONSIDER FOR SHORT TERM FUNDING UNDER B-FUND PROGRAM

TURN urges the Commission to move forward to explore opportunities to use B-Fund surplus money to fund shorter term limited projects in rural areas of the state. TURN's participation in the 2019 workshops and its discussions with tribal representatives convinces us that funding projects on tribal lands, and in other rural and low-income areas of the state with similar needs, is critical to the Commission's effort to meet its statutory mandate of universal service, and the offering of reliable and affordable communications services including voice and broadband. However, to create a program that is fair and equitable and an effective use of ratepayer money, there are many considerations that the Commission must address in a collaborative, multi-party process.

Above, TURN addresses issues related to the current statutory requirement that recipients of B-Fund money must qualify as a telephone corporation. The Commission must determine whether it wants to broaden out the recipients of this program and if so, whether to request statutory change to do so or rely on broader statutory authority found in Section 709 and 701.

The Commission should also consider other criteria and requirements for recipients of this funding to support robust services that meet customer needs, while avoiding a "one size fits all" set of criteria that risk discouraging those applicants with limited resources and that likely need the funding most. For example, if the Commission determines that recipients must offer voice service, which TURN believes should be considered, the requirement to offer voice could be defined more broadly than basic POTS service, which would give eligible recipients more flexibility to satisfy this criteria by, for example, using a third party voice services and certifying

that customers in their area have access to reliable and affordable voice services.⁷² TURN also believes that the Commission must impose specific service quality metrics and the types of reporting requirements and analysis that fund recipients must conduct to encourage transparency, facilitate monitoring, and develop lessons learned to inform future funding priorities.

The Commission must also be more clear, beyond the high level discussion in the Scoping Memo, of the intent for this funding to bridge the digital divide, whether money could be used in urban areas where significant numbers of low income customers reside or whether, and if so how, these monies will go to directly support public safety and network upgrades. Indeed, the Commission must adopt criteria to support the use of the funds in this way to set standards and develop definitions of public safety, network resiliency and other related terms. The Commission must also determine whether its intent is to use only the existing money in the Fund, or if it will use the demand for project funding and the scope and scale of projects to determine the size of the Fund and if it would be required to raise additional surcharge resources to fund the need. However, TURN notes that there is a significant balance in the B-Fund between immediately available funds and funds owed to the program by the General Fund.⁷³ As the Commission has recognized in the past, “Prudent management of the CHCF-B would not have the Commission retain the large balance currently available, but would seek to reduce the fund to a manageable and sufficient level as quickly as possible.”⁷⁴

⁷² D.07-12-054, at p. 21, 37-38. Subsequently in the Commission broadened the definition of basic service to allow other technologies. D.12-12-038, Appendix A.

⁷³ There is over \$70 million owed to the Fund. CPUC Internal Audit Unit Report on CHCF-B (April 26, 2017) at https://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/About_Us/Organization/Divisions/Internal_Audit_Unit/AuditReport-CHCF-B.pdf

⁷⁴ D.07-12-054 at p. 26.

While there are many unanswered questions and TURN is not prepared to provide a definitive list of conditions and requirements for funding recipients at this time, we encourage preliminary consideration of projects through a pilot program to conduct feasibility studies prior to adopting a specific list of criteria.

VIII. CONCLUSION

TURN looks forward to working with the Commission to design a structure that will meet short term funding needs for infrastructure in rural areas. The Commission has the authority and statutory mandate to address the universal service needs and public safety concerns of all Californians. With the appropriate criteria and safeguards for transparency, accountability and service offerings that meet the needs of all Californians, this Commission should move forward in a collaborative process to engage all stakeholders.

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Respectfully submitted,

/S/

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