

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



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Order Instituting Rulemaking into the Review of the
California High Cost Fund-A Program.

Rulemaking 11-11-007
(Filed November 10, 2011)

**REPLY COMMENTS 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 provides these reply comments in response to parties’ opening comments. AT&T, Frontier and CCTA each argue that the Commission must continue to slowly disburse subsidy from the B-Fund to Carriers of Last Resort (“COLRs”) offering basic voice service in B-Fund eligible areas. This recommendation results in maintaining the inefficient and ineffective status quo where AT&T and Frontier, and their respective wireline affiliates, receive the vast majority of funding with little accountability or transparency for use of the ratepayer-subsidized funds. Recent events clearly illustrate the pressing need for all Californians to have access to affordable and high-quality broadband services.¹ The Commission must use every tool at its disposal to achieve these objectives and therefore TURN urges the Commission to reject AT&T and Frontier’s self-serving analysis and move forward with its consideration of using B-Fund money to support projects in rural and tribal communities.

TURN notes, however, that implementing this proposal should be a collaborative, fair, equitable, and transparent process that disburses *existing* B-Fund money to projects that result in a broad social good. This Fund exists because wireline, wireless, and VoIP voice customers have paid into the Fund and the statute requires that they receive benefits. The Commission must recognize that, until the surcharge base is broadened to include all beneficiaries not just

¹ See e.g., Los Angeles Times, “Los Angeles Unified District to Close All Schools,” dated March 13, 2020, retrieved from <https://www.latimes.com/california/story/2020-03-13/los-angeles-schools-closure-possible-cornavirus> (last viewed March 16, 2020) (noting schools across the state have suspended in-person instruction in response to COVID-19 and face challenges moving towards on-line instruction: “L.A. Unified is trying to address three hurdles: a lack of broadband access for students, a lack of computers at home, and teachers and students who are underprepared to switch to a non-classroom format”).

voice customers, it should not entertain increasing the size of the Fund or the surcharge. Yet, even within the current B-Fund parameters, it is clear that the Commission has authority to meet what are clear and pressing needs for infrastructure that provides reliable and robust voice and broadband services, especially but not exclusively in rural areas with no access to service today.

II. THE COMMISSION SHOULD REJECT THE CARRIERS' SELF-SERVING INTERPRETATION OF THE B-FUND AUTHORIZING STATUTE

In opening comments, AT&T, Frontier, and CCTA argue that the Commission must maintain the status quo, in part because, they argue that Public Utilities Code Section 276.5 prohibits the Commission from moving forward to consider using funds from the CHCF-B to accomplish broader universal service goals.² The carriers claim that the Commission's only option is to continue to slowly spend down the Fund through payments to COLRs, which, not surprisingly, results in AT&T and Frontier receiving the vast majority of the current funding.³

TURN disagrees with the carriers' overly narrow and self-serving interpretation of the statute.⁴ The statute requires the Commission to stay within the framework of the Fund itself, but gives the Commission flexibility and discretion to design the program to meet overall statutory goals and to prevent the program from becoming outdated or ineffective.⁵

The carriers argue that the statute limits use of B-Fund support to telephone service offered by COLRs.⁶ Yet the statute makes no mention of COLRs, instead directing Fund payments to

² AT&T/Frontier Opening Comments at p. 3-4; CCTA Opening Comments at p. 5-6.

³ AT&T, Frontier, and their respective wireline affiliates serve over 95% of the subsidized lines as of 2018. B-Fund Fact Sheet (April 2018), retrieved from <https://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/UtilitiesIndustries/Communications/ServiceProviderInfo/CDSvcQualETC/CHCF-B%20Fact%20Sheet.pdf>

⁴ TURN Opening Comments at p. 26-27, 29.

⁵ Public Utilities Code §276(a) ("carry out the program pursuant to the commission's direction, control and approval."). See also, 276.5(a)-(c).

⁶ AT&T/Frontier Opening Comments at p.2; CCTA Opening Comments at p. 7.

“telephone corporations,” a much broader category of service provider.⁷ Moreover, the statute does not limit use of the Fund to support any specific service. Instead, the statute broadly grants the Commission discretion to develop a program to establish a “fair and equitable local rate support structure” by providing funding to telephone corporations offering “local exchange services,” but does not limit the funding to support those services.⁸ The statute sets broad goals to promote “universal telephone service and to reduce any disparity in the rates charged”⁹ by those companies serving high cost areas. The carriers’ attempts to commandeer the statute for their own benefit does not move California’s universal service goals forward and should be rejected.

Carriers also fail to discuss or cite to the significant Commission precedent that finds the Commission can direct B-Fund subsidy, without legislative intervention, to support infrastructure deployment for both voice and broadband services. As TURN discussed in opening comments, the Commission found in 2007, and again in 2009, that it had a statutory mandate to broaden the application of B-Fund monies to support “new technologies.”¹⁰ Over ten years ago the Commission decided to slowly move away from strict support of legacy copper network

⁷ §276(a). The statute requires payments to telephone corporation offering “local exchange services” but does not limit funding to those offering basic service or other Carrier of Last Resort functions. As an example of the discretion the Commission has to design the program, in 1996 the Commission limited eligibility for funding to carriers serving as Carriers of Last Resort and has subsequently set benchmarks to define “high cost” to identify eligible service areas. *See*, D.96-10-066, Appendix B at Section 6. TURN reads this Scoping Memo to request comments on changes to this requirement.

⁸ Funding is directed to “create fair and equitable local rate structures” §276(a) go to the costs for administration and oversight of the program and the fund §276(c) and to ensure that “any charge imposed to promote the goals of universal service reasonably equals the value of the benefits of universal service.” §276.5(b).

⁹ §276.5 (a) Carriers focus on the use of the term “telephone” to argue that B-Fund money can only go to basic telephone service, but TURN notes that the Commission previously found that this is a term of art not referring to any specific service but to the public policy that 95% of customers have access to voice communications that will be delivered by multiple technology platforms. D.07-07-020 at p. 59.

¹⁰ TURN Opening Comments at p. 23, 26-28 (citing to D.07-09-020 and D.07-12-054 re: need and authority to broaden out the application of B-Fund monies).

facilities. The Commission also found that its efforts to support broadband facilities complemented the its current use of B-Fund money and its other public purpose programs in light of the changing nature of basic voice services.¹¹ AT&T's, Frontier's and CCTA's comments propose to reverse the Commission's appropriate policy direction and should be rejected.

III. THE CARRIERS RELY ON AN OUTDATED AND NARROW STAFF ANALYSIS

AT&T and Frontier argue that the Commission must maintain the "status quo" for disbursement of B-Fund monies.¹² This recommendation would restrict the Commission from doing anything but slowly spending down over \$150 million¹³ in the Fund over the course of several years by providing the only two carriers--AT&T and Frontier--that are currently eligible to collect B-Fund money with tens of millions of dollars a year.¹⁴ AT&T and Frontier point to and attach a 2017 Audit Report and 2018 Staff Analysis to their comments, but these documents do not support their claims.¹⁵ The Audit Report found the Commission in violation of the statute for failing to conduct regular audits, but reached no conclusions regarding the Commission's authority or appropriate public policy for disbursement of the funds, except to note that a slow draw down of the Fund, as AT&T and Frontier have proposed, "may not be a reasonable

¹¹ *Id.*

¹² AT&T/Frontier Opening Comments at p. 3; *See also*, CCTA Opening Comments at p.5-6, 10 (CCTA briefly discusses the "threshold legal challenge" but it appears to focus more on concerns regarding procedural, scope, and efficiency/redundancy challenges with the proposal.)

¹³ *See*, Internal Audit Report on Telecommunications Public Purpose Program-California High Cost Fund-B (April 26 2017) at p. 5, 9, attached to AT&T/Frontier Opening Comments at Attachment A. This audit report relies on 2016 data regarding Fund balances amassed prior to the surcharge reduction to zero. This appears to be the most recent public data, the total Fund balance is likely different at this time.

¹⁴ *See*, Communications Division's B- Fund Factsheet, *supra* footnote 3.

¹⁵ AT&T/Frontier Opening Comments at Attachments A-C.

approach.”¹⁶ Interestingly the Audit Report expressed concern over the large fund balance and the prospect of very slow disbursement of the money for two reasons. First it noted that such a large balance calls into question compliance with the statutory language in Section 276.5, and whether, “the charges that were imposed on customers to create this surplus are producing benefits of a reasonably equal size.” Second it noted that payment of this money over a long period of time may not be reasonable for an industry that continues to undergo change. TURN agrees with these observations.

The Staff Analysis, conducted almost a year after the audit, tentatively recommended that the Commission consider the “status quo” option as the simplest and most clear path forward under the statute.¹⁷ There are several reasons to question the validity of that conclusion. First, it is important to note that both the Audit Report and Staff Analysis are a few years old and, as staff analysis and recommendations, have no legally binding impact on the issues raised in the Scoping Memo. Second, even if the Commission were inclined to consider this previous staff work, the Analysis does not support the carriers’ arguments made in these opening comments regarding the statutory language. Staff did not find that the status quo option was *required* under the current statutory language or that the Commission could not maintain the status quo by funding AT&T and Frontier at current levels, while also using B-Fund money to support other projects.¹⁸

¹⁶ AT&T/Frontier Opening Comments, Attachment A, at 2017 Audit Report at page 9.

¹⁷ This finding was despite the fact that the Commission already determined it had the authority to split off funding from the B-Fund to support advanced services projects in D.07-09-020.

¹⁸ Staff did determine that any attempt to transfer the funding out of the B-Fund for a purpose completely separate from the goals of the B-Fund would require statutory approval. The California High-Cost Fund B Options for Decreasing the Fund Balance (May 2018) at p. 4, AT&T/Frontier Opening Comments at Attachment C.

Beyond the “status quo” use of the funds, the Staff Analysis also discussed two other options for use of the B-Fund surplus. In their comments, AT&T, Frontier and CCTA conflate and overstate these options to suggest that the Analysis concludes the Commission is prohibited from “diverting” B-Fund money for “*any purpose* other than for maintaining affordable basic service rates” without legislative action.¹⁹ While staff found that the Commission would need legislative authority to *transfer* the balance of the B-Fund to a different fund or to use the money for a purpose wholly unrelated to purpose of the Fund, that is not the scenario that the Scoping Memo asks parties to address.²⁰

The Scoping Memo requests comment on using the B-Fund surplus to support infrastructure capacity and public safety. This scenario is similar to the consideration in the Staff Analysis of what it called the “industry option.”²¹ The Staff looked at this option because several recipients of B-Fund subsidies, including AT&T and Frontier, proposed allowing carriers to use excess B-Fund monies as reimbursement for costs to implement safety compliance measures in high cost areas that were adopted in the Fire-Threat Maps Docket, R.15-05-006.²² It must be noted that AT&T’s and Frontier’s proposal requires a finding that the B-Fund statutory language gives the Commission the authority to change the structure and direction of the funding while staying within the B-Fund mechanism itself, a finding that these carriers seem to oppose here. In its 2018 Analysis, staff did not recommend this option for use of the B-Fund money due to concerns that it would conflict with the specific Commission language in the Fire-Threat Maps

¹⁹ AT&T/Frontier Opening Comments at p. 3.

²⁰ Scoping Memo at p. 4 (asking for comment on use of the A-Fund and B-Fund monies for public safety and universal service needs in high cost areas and priorities and recommendations for use of the funds.)

²¹ Staff Analysis at p. 3.

²² D.17-12-024. The Staff Analysis suggests that this request was made during a CHCF-B Administrative Committee meeting. However, the Commission website only has minutes for those meetings posted through September 2017.

decision finding that carrier cost recovery was unnecessary. However, most relevant to the discussion here, the Analysis did not find that the statute prohibited the Commission from using B-Fund money to support fire hardening, only that the Commission “may” require legislative action if the use of the money was determined to be inconsistent with the statutory purposes.²³ TURN urges the Commission to follow its precedent and find that it can use the B-Fund surplus to support universal service goals under the statute.

Finally, the Commission should reject AT&T’s and Frontier’s claim that a decision to divert funds “for other purposes” could “potentially requir[e] basic telephone rates to be deaveraged and increased dramatically in high cost areas.”²⁴ Currently, AT&T and Frontier receive small amounts of subsidy from the B-Fund relative to other subsidy and service revenue, and relative to the overall cost of operations for these high cost areas.²⁵ The carriers have limited transparency and accountability requirements, making it difficult to predict how a reduction in this subsidy money could directly impact basic service rates. Importantly, the Scoping Memo makes no determination that the current subsidy levels would decline under this proposal. Moreover, these carriers have had the legal authority to deaverage rates in California for over 9 years²⁶ and, it is TURN’s understanding, that they have generally have chosen not to do so. While basic rates have skyrocketed over this time and B-Fund subsidy has declined, basic

²³ Staff Analysis at p. 3, although staff determined that the carriers’ request to use B-Fund money could not move forward because it potentially conflicted with an explicit Commission decision to limit cost recovery in the Fire-Maps docket. CCTA, at p. 4, also misinterprets the same Staff Analysis to suggest there must be “new legislation” to use B-Fund money to accomplish these goals.

²⁴ AT&T/Frontier Opening Comments at p. 3.

²⁵ See, B-Fund Fact Sheet and T-17615 (July 26, 2018) approving the budget for CHCF-B, noting that the total subsidy payments for both AT&T and Frontier in 2018/2019 were only expected to reach \$20.7 million statewide.

²⁶ D.08-09-042 (amended D.08-10-040), OP 13 providing full rate flexibility, including geographic deaveraging, by January 2011 allowing COLR rates in areas eligible for B-Fund subsidy to exceed the highest urban basic service rate offered in the COLR territory by 150%.

service rates, along with rates for associated services in high cost areas, generally remain the same as those rates in more urban areas.

Customer choice in these high-cost areas is extremely limited, and the carriers' threat to deaverage high cost rates should be taken seriously. Carriers should be made to account for any increase in retail rates offered in high cost areas that corresponds or coincides with reductions in B-Fund subsidy, beyond the required notices and advice letters. The Commission should also require AT&T and Frontier to file an application if they plan to increase rates in these B-Fund eligible areas.²⁷ The carriers' comments serve to highlight the need to invest in infrastructure in these areas to give consumers and emergency responders more options so that they are not at the mercy of these incumbent carriers. The Commission should support broader offerings of safe, reliable and affordable services and "fair and equitable" rates in high cost areas.

CCTA further argues that use of B-Fund money is unnecessary because of other sources of subsidy funding that may be available to support carrier projects and the Commission's universal service goals. AT&T and Frontier similarly point to CASF as a potential source of funding instead of B-Funding. TURN supports the use of additional funding where appropriate.²⁸ TURN also urges the Commission to take special care that B-Fund subsidy money is only being used where there are funding gaps after accounting for a wide variety of funding sources.²⁹ Yet, the existence of these other funding sources, many of which are not specifically

²⁷ The Commission has maintained authority over carriers to file notices of rate changes and to limit pricing flexibility in certain circumstances. See, General Order 96-B and D.08-09-042.

²⁸ See, D.18-12-018 requiring Commission staff to coordinate funding and attempt to coordinate CAF and CASF funding. TURN also notes that Public Advocates is proposing a pilot program that could combine B-Fund and CASF funding. Public Advocates Opening Comments at p. 6.

²⁹ This is especially the case because the B-Fund is exclusively supported by surcharges on voice service customers, which is a base of intrastate revenue that is shrinking. The Commission must consider combining funding sources and broadening the surcharge base to support these programs going forward.

available to achieve the goals set out in the Scoping Ruling,³⁰ does not make use of the B-Fund money any less appropriate nor would it prevent the Commission from moving forward with transparent and concrete plans to use this money to supplement and support a variety of projects to achieve the Legislative and Commission goals.

IV. SUPPORT FOR MOVING FORWARD

Public Advocates and the Small LECs are generally supportive of the Commission moving forward to consider use of the B-Fund to support projects that accomplish universal goals in rural areas.³¹ Public Advocates provides a detailed analysis to further illustrate that there is a clear need for funding in rural and tribal areas to expand and harden communications infrastructure. Public Advocates demonstrates that the record of this proceeding supports moving forward with a more detailed analysis and set of proposals to determine if funding these rural projects using B-Fund money is in the public interest and, if so, the proper priorities to address. TURN has not conducted a detailed analysis of the Public Advocates' data, and does not have access to the confidential data cited in the comments. However, through TURN's own data analysis in other phases of this proceeding, participation in the prior workshops, and as a result of TURN's discussions with representatives from three tribal agencies, TURN is confident that further data analysis will show significant need for further funding, including use of B-Fund surplus, in these areas to ensure there is a "fair and equitable" rate structure associated with the services that are available in that area.

³⁰ For example, the LifeLine Fund, California Teleconnect Fund, and DDTP do not fund infrastructure or network support, and as discussed in opening comments, the A-Fund limited to specific rate regulated carriers.

³¹ Public Advocates Opening Comments at p. 1, 6 (prioritize consideration to a pilot program to serve unserved or underserved tribal communities.); Small LECs Opening Comments at p.1-2, 7.

TURN notes that as the Commission moves forward, and begins to set priorities, it will need additional data to ensure a transparent and effective use of any funds. For example, the Commission must validate and expand data shown in Public Advocate’s Appendix 1 regarding the list of current providers in tribal areas, not only to determine if these entities currently provide service at all, but whether their services are high-quality, reliable, affordable and robust.³² Likewise, some of Public Advocates’ analysis appears to be based on FCC Form 477 reports which, as Public Advocates acknowledges, may overstate even the limited amount of broadband that some of the data currently shows exists.³³ Despite uncertainty about the data, TURN supports further consideration of a pilot program focused on infrastructure to be deployed on tribal land. Yet, because the B-Fund money was collected to broadly support rural infrastructure and public safety communications, TURN suggests more data and discussion is necessary to design a pilot that would benefit some tribal areas while ensuring the structure to disburse the funding is scalable to support a broader scope of high cost areas and communities after the pilot is complete.

TURN also agrees with Public Advocates and the Small LECs that while the Public Utilities Code places restrictions on the types of entities that can receive A-Fund support and imposes COLR and rate regulation obligations on those entities that receive A-Fund support, the B-Fund provides more discretion and flexibility to the Commission to design the program to achieve the goals of the statute.³⁴ TURN agrees that the B-Fund statute requires recipients to be “telephone corporations,” but as both Public Advocates and the Small LECs acknowledge, this requirement could be satisfied by entities that organize themselves around this requirement using

³² Public Advocates Opening Comments at p. 4.

³³ Public Advocates Opening Comments at p. 3, 5, A-1.

³⁴ Public Advocates Opening Comments at p. 8; Small LECs Opening Comments at p. 6-7.

different structures or frameworks, or, during a pilot project, the Commission could attempt to revise this specific requirement through legislative action.³⁵

V. 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.

Dated: March 16, 2020

Respectfully submitted,

_____/S/ _____

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³⁵ Id.