

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

Order Instituting Rulemaking to Consider Modifications to
the California Advanced Services Fund

R. 12-10-012
(Filed October 25, 2012)

**OPENING COMMENTS OF THE UTILITY REFORM NETWORK, AND THE
GREENLINING INSTITUTE ON THE PROPOSED DECISION IMPLEMENTING THE
CASF BROADBAND ADOPTION, PUBLIC HOUSING AND LOAN ACCOUNT
PROVISIONS**

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I. INTRODUCTION

Pursuant to Rule 14.3 of the Commission’s Rules of Practice and Procedure, The Utility Reform Network and the Greenlining Institute¹ (“Joint Consumers”) respectfully submit these opening comments. Joint Consumers acknowledge that the Proposed Decision is an interim decision and that it must be implemented quickly to meet the Commission’s statutory deadline to start accepting CASF applications on July 1, 2018.² However Joint Consumers are concerned that issues critical to the success of these programs, that were raised in comments and at workshops, are not adequately addressed – if at all – in the Proposed Decision. The Proposed Decision did address many of the issues that Joint Consumers raised during the proceeding, and Joint Consumers generally support the Proposed Decision with the modifications listed below.

II. DISCUSSION

A. No Guaranteed Adoptions

Joint Consumers supports language in the Proposed Decision declining to require applicants to guarantee its participants will subscribe to residential broadband as a result of the funded project.³ There are many factors beyond the control of the CASF applicants that make it difficult – if not impossible –to guarantee that any of their project participants will subscribe to residential broadband.⁴ In addition, because some communities face multiple barriers to adopting residential broadband, Joint Consumers support the additional criteria used by the Commission to

¹ The Proposed Decision did not list Greenlining as a party that participant in Phase I of the proceeding. Greenlining and TURN (“Joint Consumers”) filed joint reply comments on the Phase I issues on April 2, 2018. Although these comments are not specifically cited in the Proposed Decision and the Proposed Decision adopts many of Joint Consumers’ recommended modifications.

² Proposed Decision at pp. 4, OP 2. See also Amended Scoping Memo, Appendix B at p. 8.

³ Proposed Decision at p. 9, FOF 9, Appendix A at Section 1.7(u). See also Amended Scoping Memo, Appendix B at p. 11.

⁴ TURN Opening Comments on the Amended Scoping Memo at p. 4 (March 16, 2018).

give priority to communities that face historic barriers to broadband adoption.⁵ To this end, Joint Consumers also support the Proposed Decision’s directive to Staff to identify a baseline adoption analysis, and recommend including any demographic information that is linked to historic socioeconomic barriers to broadband adoption in this particular Staff analysis, and to utilize that baseline adoption analysis to identify priority areas for CASF funding to carry out this policy goal.⁶

Although the baseline adoption analysis may help the Commission identify priority areas for CASF funding, it – by itself – will not guarantee that the Commission will know whether a CASF-funded project will be effective at increasing adoption in a project area. To gauge if a CASF-funded project will be effective at increasing adoption, in its comments Joint Consumers recommended that the Commission should utilize the applicant’s reports to better understand why some projects are more effective than others at overcoming barriers to adoption.⁷ Joint Consumers’ recommendation was not addressed in the Proposed Decision. Therefore, to carry out the stated goals of the Proposed Decision, Joint Consumers continue to recommend that the Proposed Decision be modified to include a directive for Staff to utilize the projects’ report data – together with or separate from a baseline adoption analysis - to re-evaluate the Commissions’ application criteria and evaluation process and for Staff to recommend modifications, as needed, to maximize the effectiveness of CASF grants, especially in priority areas. Therefore, an ordering paragraph should be added as follows:

X. Staff will analyze the grantee’s project report data to understand why some CASF projects are more effective than other at overcoming broadband adoption

⁵ Proposed Decision at p. 12.

⁶ Proposed Decision at p. 10.

⁷ TURN Opening Comments on the Amended Scoping Memo at p. 4.

barriers. Staff will utilize this analysis to recommend modifications to the CASF grant applications and evaluation process by December 1, 2019.⁸

1. Adoption Data

The Proposed Decision directs staff to conduct a baseline adoption analysis that could potentially include other demographic barriers to adoption.⁹ This analysis generally aligns with Joint Consumers' recommendation that the Commission collect detailed adoption and demographic data as a way to track project results and modify the application process as needed.¹⁰ However, the Proposed Decision focuses on using the California Broadband Adoption Map and grantee reports for this purpose.¹¹ Joint Consumers encourage the Commission to go beyond FCC Form 477 data that is currently used for California's Broadband Adoption Map and also use data that is sufficiently granular and accurate to represent the areas served by the CASF grants in conducting the baseline adoption analysis.

For example, the Proposed Decision directs staff to, at a minimum, identify adoption data at the county level.¹² Joint Consumers propose that the baseline adoption analysis posted on the Commission's website go to the census block level but, at a minimum, should be conducted at the census tract level, especially if staff uses FCC Form 477 data which already reports adoption at the census tract level.¹³ Adoption Account applicants will likely focus on small geographic units such as neighborhoods and census blocks, therefore it would be useful to have adoption data on a granular scale to better represent the proposed areas the applicant plans to serve. Granular

⁸ December 1, 2019 was selected as a date for the report because Staff will have a year's worth of data on which to base its analysis.

⁹ Proposed Decision at p. 10.

¹⁰ Joint Consumers Reply Comments at pp. 2-6.

¹¹ Proposed Decision at p. 27.

¹² Proposed Decision at p. 27.

¹³ See FCC Internet Access Service Reports, available at <https://www.fcc.gov/internet-access-services-reports> (last visited June 10, 2018).

adoption data would also allow an applicant seeking to serve low-adoption neighborhoods surrounded by high-adoption neighborhoods from being disadvantaged in the application process simply because that neighborhood is in a county with a high overall adoption rate. This concern is especially salient in low-income, low-adoption, urban communities.

Moreover, FCC Form 477 data provides insufficiently detailed subscription information, with adoption reported in 20 percent ranges (0-19%, 20-39%, 40-59%, 60-79%, 80-99%, 100%). As a result, an area with an abysmal 61 percent adoption rate would be treated the same as an area with nearly 80 percent adoption. These percentage adoption ranges are simply not precise enough for applicants or the Commission to adequately evaluate the adoption needs of a particular project. Therefore, Joint Consumers urge the Commission to direct Staff to provide a baseline adoption analysis that is more accurate such as a 5 percent range instead of a 20 percent range.

Finally, the Proposed Decision directs Staff to:

[I]dentify a baseline adoption analysis by at least statewide average, consortia region, and county. Staff will investigate whether this baseline adoption analysis can and should include other demographic barriers to adoption such as age, speaking a primary language other than English, income, and education.¹⁴

However, this requirement is not addressed in Appendix 1, nor in any of the ordering paragraphs. Therefore, Joint Consumers suggest adding an ordering paragraph to address this issue and proposes the following language:

X. Staff will analyze and publish baseline adoption data by disaggregated data, including but not limited to statewide average, consortia region, county, census tract, and census bloc (or neighborhood) by no later than December 1, 2018.¹⁵ Such subscription and adoption data will be reported in disaggregated adoption ranges no broader than 5%. This baseline adoption data shall include demographic data relating to barriers to broadband adoption to the extent reasonably feasible.

¹⁴ Proposed Decision at p. 10.

¹⁵ Joint Consumer propose a deadline of December 1, 2018, to allow applicants to use the adoption baseline data in the applications for the next round of applications due January 1, 2019.

Staff shall use this baseline adoption data along with grantee reports to recommend improvements to the program and identify priority areas for CASF funding.

2. Data Collection and Adoption Verification Requirements

In Phase I of this proceeding, Joint Consumers encouraged the Commission to require applicants to explain and source the data used to report the number of broadband subscriptions.¹⁶ The Proposed Decision generally follows the contours of these recommendations and requires applicants to document how they developed their broadband adoption projections, to provide a summary of broadband enrollment, and to collect and keep verifiable enrollment data directly from participants.¹⁷

Joint Consumers also recommended that the Commission require pre- and post-implementation surveys to help track adoption.¹⁸ However, the Proposed Decision denied this recommendation, noting that requiring surveys may not be feasible and may be too costly.¹⁹ While an in-depth adoption survey may be costly, a standardized questionnaire developed by Staff and given to participants before and after participation in a broadband access or digital literacy program is unlikely to be too expensive.²⁰ This survey could include questions regarding demographics, income, the cost of broadband, reasons for adoption/non-adoption and more. Collecting this survey data from as many participants as possible would be extremely valuable, providing the Commission, internet service providers, applicants, community based organizations and non-profits with detailed data on the adoption rates and barriers specific to different types of programs in each consortia region and could help improve the efficacy of the adoption program.

¹⁶ TURN Opening Comments at pp. 3-4.

¹⁷ Appendix 1 at approximately pp. 7, 9-10.

¹⁸ Joint Consumers Reply Comments at p. 5.

¹⁹ Proposed Decision at p. 27.

²⁰ This questionnaire could even become part of the curriculum with participants answering questions online during a digital literacy class using a website like Google Forms or Survey Monkey.

Joint Consumers would be open to working with Staff to develop the pre- and post- survey questionnaires if needed. Therefore, Joint Consumers recommends the Commission add an ordering paragraph to the proposed decision that reads:

X. Staff shall publish and disseminate to grantees a standardized pre- and post- project questionnaire that gathers data on demographics, broadband costs and barriers to broadband adoption from participants in projects funded by the Broadband Adoption Account.

B. Eligible Applicant

In this proceeding, Joint Consumers have urged the Commission to adopt CASF program rules that are sufficiently broad to encourage a wide diversity of potential applicants and projects. Then, during the application process, applicants should have to explain why their projects will meet their community's unique needs in the most cost-effective and meaningful way; thus, ensuring that CASF grants are spent wisely and the Fund is protected.²¹ Yet, the Proposed Decision does not address TURN's recommendation and, instead adopts more restrictive criteria for applicant eligibility than what Public Utilities Code Sec. 281(j)(2) requires.²²

Section 281(j)(2) broadly describes the statutory applicant eligibility criteria for CASF grants, stating "Eligible applicants are local governments, senior centers, schools, public libraries, nonprofit organizations, and community-based organizations with programs to increase publicly available or after-school broadband access and digital inclusion, such as digital literacy training programs." If properly implemented to carry out Legislative intent, the eligible applicants listed in Section 281(j)(2) should result in a broad list of organizations that work closely with communities to meet their unique needs. As such, Joint Consumers continue to recommend that

²¹ TURN Opening Comments at pp. 2-3.

²² Proposed Decision at p. 15; TURN Opening Comments at pp. 2-3.

the Commission broaden the eligibility criteria and be more inclusive of potential applicants from each of these statutorily eligible groups. In its review of possible grant applicants, the Commission can be more selective of applicants and give preference to applicants that meet the Commission's criteria while providing the most benefit to the intended participants. Joint Consumers recommend that applications should not be automatically disqualified if, for example, they seek to charge a reasonable or sliding scale participant fee, create curriculum, or represent a dual or repeat application relative to other CASF Accounts.

1. Participant Fees

The categories of interest groups listed in Sec. 281(j)(2) may offer programs to participants for a small and reasonable fee, for a sliding-scale fee, or for free. These fees generally cover a portion of the operating cost of the programs that the organizations offer. As such, TURN suggested broadening the Commission's criteria to permit CASF eligible applicants to charge these fees, especially since the fund will only cover up to 85% of the project's operating costs.²³ Allowing applicants to charge a reasonable fee may enhance the effectiveness of CASF's limited funds on a larger project because it will support a smaller percentage of the project's costs. Therefore, the Proposed Decision should be amended to permit applicants to charge a reasonable and small fee, or a sliding-scale fee, not to exceed the percentage of operating costs that is not covered by CASF funds. Therefore Section 1.4 in Appendix 1 should be modified to read:

~~No adoption grant recipient can charge for classes (funded by a grant)~~ No adoption grant recipient can make a profit of any kind from the grant funds. If an adoption grant recipient chooses to charge for a class, any fees must be reasonable and applied on a sliding scale such that low-income participants (participants with a median household income at or below the California Alternate Rates for Energy (CARE) program income limits for a household of four) are not be required to pay.

²³ TURN Opening Comments at p. 1. See also Proposed Decision, Appendix 1 at 1.4.

2. Creating Curriculum

As written, the program rules may have the unintended consequence of prohibiting an organization from modifying digital literacy curriculum to meet the needs of the participants of that program. For example, an applicant could not modify curriculum to be accessible to persons with disabilities, low education levels, or interpreting the language into a different language because doing so may be considered “creating” new curriculum.²⁴ The Proposed Decision should be revised to clarify the Commission intent that modifications to curriculum would be acceptable under the terms of the funding. If, however, the Commission’s intent is to interpret “creating” new curriculum to include modifying existing curriculum to be accessible to the participants, this would be a barrier to many potential applicants and would result in applications for cookie cutter, weak programs. Joint Consumers recommend that the Proposed Decision be modified to permit applicants to create new curriculum and require them to explain why that new curriculum was needed to meet the needs of the community. Therefore Section 1.5 in Appendix 1 should be modified to read:

Digital inclusion projects may include digital literacy training programs and public education to communities with limited broadband adoption, including low-income communities, senior communities, and communities facing socioeconomic barriers to broadband adoption, consistent with the adoption projects of the Public Housing Account. For digital inclusion projects, the Commission may fund up to 85 percent of the program costs and reimburse the following:

- [Omitted]
- [Omitted]
- [Omitted]
- [Omitted]
- [Omitted]

²⁴ Proposed Decision, Appendix 1 at 1.5. If the rules are not intended to include modifying curriculum as “creating” curriculum, the Proposed Decision should be modified to clarify that modifying curriculum to meet the needs (e.g. accommodating disabilities, low education levels, and non-English languages) of project participants is permissible. See also TURN Opening Comments at p. 2.

- Gathering, preparing (including modifying existing curriculum to meet the language, disability, and educational needs of participants) and distributing digital literacy curriculum (not creating new curriculum); and
- [Omitted]

3. Dual and Repeat Applicants

In their opening comments, Joint Consumers requested the Commission clarify how it intended to treat dual and repeat applicants.²⁵ While it appears that an applicant may apply for multiple grants (e.g. both the digital literacy and broadband access grants) within the Adoption Account or across other accounts concurrently or in succession to address the dual access-literacy needs of the community²⁶, the application process should explicitly allow an applicant to notify the Commission that it is or it intends to apply for multiple grants, and the Commission should review such applications in combination and holistically. Staff should be aware that an applicant is requesting, or intends to request, money from multiple CASF sources so Staff can coordinate funding, not only to provide the most value to a specific project, but also to ensure there is no wasteful or inefficient overlap between the applications. Therefore, Joint Consumers recommend the Proposed Decision be amended to require an applicant to specify whether an applicant is currently applying for another CASF grant or intends to apply for another CASF grant in the next 12 months. Therefore, Attachment 1.C, “Sample Preference Checklist” should include:

- Project considers coordination with other public purpose programs and funding sources, including additional CASF grants. **Include an Addendum with the Application explaining if you are applying for another CASF grant concurrently or intend to apply for another CASF grant within the next 12 months.**

²⁵ TURN Opening Comments at p. 5.

²⁶ Proposed Decision at pp. 8-9.

C. Preference Checklist and Eligibility Criteria

In response to comments regarding the Commission’s prioritization of adoption projects, the Proposed Decision requires applicants to fill out a preference checklist.²⁷ Joint Consumers support the inclusion of this checklist as it generally aligns with Joint Consumers’ goal of simplifying the application process and it lets applicants know what types of projects receive preference.²⁸ However, the Proposed Decision also eliminates the previous evaluation/scoring criteria,²⁹ stating that projects will be evaluated “based on meeting all the requirements in the Information Required from Applicants and Preference Checklist.”³⁰ While the previous scoring criteria is somewhat duplicative of the checklist, it provided applicants with an incentive to design efficient programs. In particular, the previous evaluation criteria looked at funding requested per participant.³¹ While it is likely that the Commission will end up evaluating this factor as a result of reviewing the other criteria, explicitly including this more detailed scoring metric in the evaluation criteria³² would encourage applicants to design programs that keep costs down, a necessity given the small size of the Adoption Account. It would also allow the Staff to choose between competing applications should the cost of these applications exceed the Adoption Account budget. Therefore Appendix 1 in the Proposed Decision should be modified to read:

1.8. Evaluation Criteria

Applications will be evaluated based on meeting all the requirements in the Information Required from Applicants and Preference Checklist. **Applications will also be evaluated based on the amount of funding requested per participant.**

²⁷ Proposed Decision at p. 13.

²⁸ See generally Joint Consumers Phase I Reply Comments at p. 3.

²⁹ Proposed Decision at p. 24.

³⁰ Appendix 1 to the Proposed Decision at p. 10.

³¹ See Appendix B to the Amended Scoping Memo at pp. 11-12.

³² Given the lack of information on how the Commission assigns point values, Joint Consumers have no position on whether point totals for each category (i.e. a maximum of 25 points for funding requested per participant) should also be included with the evaluation criteria.

D. Partnerships with Internet Service Providers

Joint Consumers generally support that the Proposed Decision gives preference to applicants who partner with Internet Service Providers. However, as TURN cautioned in its opening comments, the Commission should ensure that those partnerships do not require digital literacy programs to exclusively promote one Internet Service Provider's services at the expense of competition and informed consumer choice.³³ These program participants are exceptionally vulnerable in that they have been recently introduced to the internet and on-line environment and presumably have little to no knowledge regarding the various options and "players" in the marketplace. These consumers will likely be looking to these programs for guidance and advice on adoption options. These consumers should not be misled or otherwise given the impression that they do not have a choice for internet services through program materials, branding, or other marketing materials solely from the ISP partner that would likely be accessible during the grant-funded program. While Joint Consumers are not suggesting that the partner ISP be prohibited from branding materials, we are suggesting that the rules be revised to require applicants to demonstrate how they will educate participants about choices in the marketplace and to explicitly prohibit partnerships with Internet Service Providers that exclusively promote only one Internet Service Providers' services. Therefore, the Conclusions of Law in the Proposed Decision should be modified to read:

10. It is reasonable for Appendix 1 to address Broadband Adoption Account issues as follows:

- Include language to require applicants and projects to be technology **and provider** neutral and not favor one technology **or broadband provider** over another;
- [omitted]

³³ TURN Opening Comments at pp. 5-6.

- [omitted]
- [omitted]
- [omitted]

E. Eligible Projects

The Proposed Decision eliminated eligibility for projects that included devices to assist with digital literacy programs, citing the limited funding in the Adoption Account.³⁴ Joint Consumers understand the need to prudently manage the Adoption Account, however the cost of a computing device is a major barrier to adoption and providing these devices will help to ensure the long-term success of the funded program.³⁵ Therefore, Joint Consumers urge the Commission to allow the provision of these devices in appropriate and relevant programs to close the digital divide. In its opening comments, TURN advocated for increasing the per-device subsidy beyond \$250³⁶ to give flexibility to applicants to design a full-service program. Also, in response to proposals that organizations should be allowed to charge for devices, Joint Consumers suggested a sliding scale payment system where the costs could be defrayed but the lowest-income participants would not have to pay for the device.³⁷ This arrangement would allow organizations to raise necessary funds to match the 15% cost of the device while also ensuring that the neediest Californians can still have meaningful and convenient access to broadband. Instead of entirely eliminating CASF Adoption Account support for devices, while still ensuring that there are sufficient funds. Joint Consumers recommend that the Commission lower the per-device subsidy for computing devices to \$150 and/or limit the provision of devices to low-income households

³⁴ Proposed Decision at p. 19.

³⁵ See *Digital Divides 2016*, Pew Research at slide 39 (2016) available at <http://www.pewinternet.org/2016/07/14/digital-divides-2016/> (last visited June 7, 2018).

³⁶ TURN Opening Comments at p. 2.

³⁷ See Joint Consumers Reply Comments at p. 12.

with school-age children. Quality low-cost and refurbished computing devices may be commercially available for \$150,³⁸ and grantees can verify eligibility for a device by documenting whether the recipient participates in SNAP or the National School Lunch Program. This proposal would ensure the Californians that need a device the most can receive one, while still protecting the Adoption Fund. Therefore, the Conclusions of Law in the Proposed Decision should be modified to read:

10. It is reasonable for Appendix 1 to address Broadband Adoption Account issues as follows:

- [omitted]
- [omitted]
- For Digital Literacy Projects, ~~eliminate funding for devices~~ costs for computing devices are reimbursable up to \$150;
- For Digital Literacy Projects, only households that participate in the Supplemental Nutritional Assistance Program or the National School Lunch Program and have school age children are eligible to receive computing devices;
- [omitted]
- [omitted]

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³⁸ For example, a highly rated Acer Chromebook device costs approximately \$150.00 on Amazon, available at <http://a.co/h9x6lx2> (last visited June 7, 2018).

III. CONCLUSION

For the reasons set forth above, Joint Consumers request that the Proposed Decision be modified in accordance with our recommendations here.

Respectfully Submitted,

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