



**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

R. 11-11-007

**REPLY COMMENTS OF THE CALIFORNIA CABLE &
TELECOMMUNICATIONS ASSOCIATION
ON FIFTH AMENDED ASSIGNED COMMISSIONER'S
SCOPING MEMO AND RULING**

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March 16, 2020

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The California Cable and Telecommunications Association (“CCTA”)¹ hereby submits these reply comments to the California Public Utilities Commission (“CPUC” or “Commission”) responding to opening comments filed February 28, 2020, in response to the “Fifth Amended Assigned Commissioner’s Scoping Memo and Ruling” dated December 13, 2019 (“Fifth Scoping Memo”).

I. SUMMARY

The opening comments highlight statutory provisions that govern how the CPUC could potentially proceed with proposals in the Fifth Scoping Memo, which focus primarily on support to expand voice and broadband service options in tribal areas. The CPUC can proceed with use of monies in the California High Cost Fund A (“A Fund”) or California High Cost Fund B (“B Fund”) only if the use meets these statutory requirements, or if legislation is enacted to modify these requirements. To expeditiously expand service in tribal areas, CCTA respectfully urges the CPUC to instead utilize the California Advanced

¹ CCTA is a trade association consisting of cable providers that have collectively invested more than \$40 billion in California’s broadband infrastructure since 1996 with systems that pass approximately 96% of California’s homes.

Services Fund (“CASF”) program, which already allows tribal entities to receive broadband grants. The CASF workshop scheduled for March 25 provides the CPUC an opportunity to immediately direct broadband consortia to prioritize development of CASF projects for tribal areas.

II. COMMENTS

A. Only a “telephone corporation” is eligible to draw from the B Fund.

The opening comments recognize the statutory requirement that only a “telephone corporation” is eligible to draw from the B Fund.² Absent legislation, it would be legal error to give monies from the B Fund to any entity that has not obtained a certificate of public convenience and necessity as a telephone corporation.³

B. The B Fund can be used to support only voice service.

CCTA agrees with the opening comments explaining that the B Fund can be used to support voice service only.⁴ TURN cobbles together snippets from a variety of statutes to erroneously claim that the B Fund can be used to support both voice and broadband.⁵

However, TURN’s argument is wrong. It ignores the plain meaning of the following statutes that directly govern use of the B Fund:

- Public Utilities Code Section 276.5(a), which requires that the B Fund support “universal *telephone* service,” as referenced in the opening comments of AT&T and Frontier.⁶

² Comments of Small ILECs at 7; Comments of AT&T and Frontier at 2; and Comments of California Office of Public Advocates (“Cal-PA”) at 8.

³ See Public Utilities Code Section 1001 (requiring that telephone corporations obtain certification from the Commission).

⁴ Comments of AT&T and Frontier at 2; and Comments of the small incumbent local exchange carriers (“Small ILECs”) at 7.

⁵ Comments of TURN at 4 to 5.

⁶ Comments of AT&T and Frontier at 2 to 3 (emphasis added).

- Public Utilities Code Section 276(a), which requires that the B Fund program provide for “transfer payments to telephone corporations providing *local exchange services.*” (emphasis added)⁷

Neither TURN nor Public Advocates Office (“Cal-PA”) acknowledge that Section 276, which cross-references Section 276.5, is explicit in requiring that B Fund surcharge funds be used to support provision of “local exchange services.” While one provision of Section 276.5(a) gives the CPUC discretion in “the manner in which the commission collects and disburses [B Fund] funds,” this is preceded by the introductory phrase “[e]xcept as otherwise explicitly provided....”⁸ Neither TURN nor Cal-PA identify any statutory language that explicitly provides authority for the Commission to disburse B Funds for broadband service.

Further, the legislative history of laws enacted over the past decade to reauthorize the B Fund indicate legislative intent to continue the B Fund support of voice service provided by carriers of last resort (“COLRs”).⁹ The Legislature has re-enacted these statutes with no change to the provisions that require funds to be used for “local exchange service” and to promote “universal telephone service.” In contrast, in 2012, the Legislature amended the statute governing the A Fund to expressly authorize support for broadband-capable

⁷ All further section references are to the Public Utilities Code.

⁸ Section 276.5(a) provides as follows: “The commission shall develop, implement, and maintain a suitable, competitively neutral, and broad-based program to establish a fair and equitable local rate support structure aided by universal service rate support to *telephone corporations* serving areas where the cost of providing services exceeds rates charged by providers, as determined by the commission. The program shall be known, and may be cited, as the California High-Cost Fund-B Administrative Committee Fund program or CHCF-B program. The purpose of the program shall be to promote the goals of *universal telephone service* and to reduce any disparity in the rates charged by those companies. *Except as otherwise explicitly provided*, this subdivision does not limit the manner in which the commission collects and disburses funds, and does not limit the manner in which it may include or exclude the revenue of contributing entities in structuring the program.” (emphasis added) *See also* Comments of Small ILECs at 6 to 7 (describing that despite the discretionary language in Section 276.5, statutory requirements apply to use of B Fund).

⁹ SB 1364 (Fuller 2014) (extending the B Fund program from January 1, 2015, to January 1, 2019) and AB 1959 (Wood 2018) (extending the B Fund program from January 1, 2019, to January 1, 2023). The committee and floor analyses for these bills describe the B Fund as providing support to ILEC COLRs for provision of basic voice service.

facilities.¹⁰ The Legislature has made no similar change to authorize use of the B Fund for broadband.

Finally, even the CPUC has implicitly recognized the limitation in the B Fund statutes, and implemented these statutes to provide support to COLRs specifically for provision of “basic service,” defined as voice service.¹¹ Thus, absent legislation to modify these statutes, it would be legal error to use funds in the B Fund to support broadband service.¹²

C. The CPUC is prohibited from diverting customer surcharge funds for a different purpose than authorized.

As described in opening comments, the CPUC is prohibited by statute from (1) diverting surcharge funds collected from customers for a specified purpose authorized by the Legislature in order to use them for another purpose, or (2) transferring surcharge funds from one public purpose program to another.¹³ Thus, absent legislation, the B Fund can be used to support a tribe only if the tribal entity meets statutory requirements to (1) become a certificated telephone corporation, and (2) receive support to provide voice service.¹⁴

These statutory requirements apply even if the proposed use of funds is framed as a “pilot,” such as that proposed by Cal-PA.¹⁵ TURN, although proposing use of the B Fund

¹⁰ SB 379 (Fuller 2012) (amending Section 275.6).

¹¹ Comments of Small ILECs at 7.

¹² The opening comments of TURN (at 25 to 27) argue that the original 2007 CASF decision diverting some B Fund monies for the CASF program is precedent for diverting the B Fund for the uses proposed in the Fifth Scoping Memo. However, that decision is distinguishable from the proposed diversion now because, in 2007, there was no separate public purpose program authorized by the Legislature to support broadband. Moreover, subsequent reauthorizations of the B Fund since that 2007 decision demonstrate legislative intent that the B Fund is to support ILEC COLR provision of voice service, not broadband.

¹³ Comments of AT&T and Frontier at 3 to 4.

¹⁴ To the extent the Fifth Scoping Memo also proposes using the A Fund to support voice and broadband service for tribes, Section 275.6 requires that tribes be subject to rate of return regulation, be a telephone corporation, be a COLR, and qualify as a rural telephone company under federal law, among other requirements. (Comments of Small ILECs at 4 to 6).

¹⁵ Comments of Cal-PA.

for some limited number of undefined projects, acknowledges that “funds must be used for projects that fit the parameters of the fund.”¹⁶ The plain language and legislative history of Sections 276 and 276.5 do not indicate any legislative intent to authorize use of the B Fund for “feasibility studies,” “pilots,” or other undefined uses. Finally, as observed by the Small ILECs, even if a pilot or grant program met the statutory requirements of providing B Fund support to a telephone corporation for supporting voice service, the CPUC would still need to modify the existing decision that establishes B Fund program rules.¹⁷

D. The CASF program is available now for the uses proposed in the Fifth Scoping Memo.

All the opening comments identify the CASF program as appropriate for the proposed uses identified in the Fifth Scoping Memo. Unlike the B Fund, the CASF program is specifically authorized to collect surcharge funds from customers to provide grants for broadband.¹⁸ For all of the following reasons, the CASF program offers a much more expeditious and less complicated option to meet identified needs in tribal areas:

- The CASF program already authorizes tribal entities as eligible to receive CASF grants.¹⁹
- The CASF program does not require an applicant, including a tribal entity, to be a certificated “telephone corporation.”²⁰
- The CASF program has statutory authority to fully fund projects.²¹

¹⁶ Comments of TURN at 3.

¹⁷ Comments of Small ILECs at 7 (“Money from the [B Fund] program is currently dispensed through a high cost proxy funding mechanism created by the Commission, and if the Commission wished to modify or expand upon that mechanism [consistent with statutory requirements], it would have to take proper steps to navigate the administrative process and change the rules.”).

¹⁸ Section 281.

¹⁹ CCTA Comments at 7 and Comments of Cal-PA at 6.

²⁰ Section 281(f)(7) and CASF Program Rules at 8, available at [https://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/Communication s - Telecommunications and Broadband/CASF%20InfrastructurePublished%20Rules%20Revised.pdf](https://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/Communication_s_-_Telecommunications_and_Broadband/CASF%20InfrastructurePublished%20Rules%20Revised.pdf).

²¹ Section 281(f)(13).

- The CASF program has substantial funding available that is already authorized specifically for broadband infrastructure and adoption grants.²²
- The CASF program includes funding for regional broadband consortia, which are charged with convening stakeholders to develop CASF applications, and are recognized as being effective in outreach and engagement with tribal entities.²³
- The CPUC has a workshop already scheduled for March 25, which provides the CPUC with an opportunity to immediately direct the CASF broadband consortia to prioritize development of CASF broadband infrastructure and adoption projects that serve tribal areas.²⁴

Moreover, using the CASF, instead of the B Fund, to fund tribal broadband projects will benefit consumers by avoiding unnecessary increases in the B Fund surcharge, consistent with the Communications Division (“CD”) Staff’s recommendation to the Commission after the B Fund audit.²⁵

E. Cal-PA’s proposal to support operating costs of broadband projects would exceed CPUC statutory authority.

Cal-PA proposes that the CPUC conduct workshops to consider using the B Fund for ongoing operating costs of CASF broadband projects.²⁶ This proposal should be rejected because, as discussed above, the CPUC is authorized to use the B Fund to support voice service, not broadband. In addition, Cal-PA’s proposal for workshop review of B Fund support of operating costs per household, affordability standards, and monthly operating costs and revenues²⁷ is inconsistent with the B Fund program. Moreover, even if funding such costs were lawful, which it is not, imposing the burdensome requirements proposed by

²² Section 281(d)(1).

²³ Section 281(g). Several panelists at the CPUC’s En Banc held on March 4, 2020, described broadband consortia as being effective in engaging tribal communities on broadband projects.

²⁴ Section (f)(2) (requiring annual consultation with consortia and other stakeholders).

²⁵ CD Staff recommended to the Commission to use the B Fund surplus for the purpose authorized in statute – the ongoing monthly claims from the B Fund COLRs for provision of voice service in high-cost portions of their service areas. See Comments of AT&T and Frontier, Attachment B and Comments of CCTA at 4.

²⁶ Comments of Cal-PA at 6 to 8.

²⁷ Comments of Cal-PA at 7.

Cal-PA would stifle service provider interest in seeking CASF funds to deploy broadband. Accordingly, no workshop is necessary for development of specific projects and CASF infrastructure grant applications. Instead, tribal entities can work with regional consortia to generate applications for submission to the CPUC this year under the CASF program.

F. The factual record in this proceeding does not support proposed changes.

CCTA's opening comments expressed concern about assertions of fact in the Fifth Scoping Memo and the need for any CPUC decision to be based on a factual record developed consistent with statutory requirements and CPUC rules.²⁸ A similar concern arises with respect to the hearsay assertions of fact about service in tribal areas in opening comments of Cal-PA and TURN, especially the TURN statements quoting tribal leaders.²⁹ CCTA welcomes the participation of tribal leaders in this proceeding but objects to the CPUC making any findings of fact except based on evidence properly entered into the record.

Importantly, another advantage of pursuing the objectives of the Fifth Scoping Memo through the CASF program is that there is no need for a workshop or any other time-consuming procedural steps to develop a factual record in this proceeding. A tribal entity – with assistance of consortia leaders – can simply develop a CASF broadband project and apply for a grant.

III. CONCLUSION

The CPUC faces significant statutory barriers to use the B Fund for the uses

²⁸ Comments of CCTA at 9 to 11.

²⁹ Comments of TURN at 17 to 20.

proposed in the Fifth Scoping Memo. The CASF program, on the other hand, is authorized by the Legislature for broadband deployment to rural, tribal and unserved areas. CCTA respectfully urges the CPUC to use the CASF program as the most expeditious and effective approach to expand service options in tribal areas.

Respectfully submitted,

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