

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



FILED
12-08-14
04:59 PM

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

Rulemaking 12-10-012
(Filed October 25, 2012)

**COMMENTS
OF THE OFFICE OF RATEPAYER ADVOCATES
ON PROPOSED DECISION OF ASSIGNED
COMMISSIONER PEEVEY**

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December 8, 2014

I. INTRODUCTION

Pursuant to Rule 14.3 of the California Public Utilities Commission's (CPUC) Rules of Practice and Procedure, the Office of Ratepayer Advocates (ORA) hereby submits these opening comments to Commissioner Peevey's Proposed Decision entitled *Decision Adopting California Advanced Services Fund Broadband Public Housing Account Application Requirements and Guidelines* (PD), filed on November 17, 2014. Assembly Bill 1299 established the Broadband Public Housing Account as a part of the California Advanced Services Fund (CASF) in order to encourage broadband infrastructure deployment and broadband adoption in Publicly-Supported Housing Communities (PSCs). The PD adopts *CASF Broadband Public Housing Account Application Requirements and Guidelines* (Guidelines) proposed by Communications Division (CD) staff in September, 2014. The Guidelines provide project-eligibility and compliance verification requirements for applicants and decision-makers.

ORA's comments focus on Guidelines sections pertaining to speeds offered and maximum costs of broadband service to residents, with recommendations targeted towards ensuring that PSC residents receive speeds sufficient to take full advantage of broadband-related benefits at prices that encourage adoption. These comments also address the Guidelines' scheduling of the first deadline on a date *before* the PD is decided upon by the Commission, and recommend that date be pushed back allowing applicants to prepare application materials which conform to final Guideline requirements.

II. DISCUSSION

A. The Commission Should Amend the PD to Increase the Minimum Speed Offered to Low Income Consumers

The Guidelines allow CD staff to approve projects when proposed project networks can offer 6 megabits per second (Mbps) download and 1.5 Mbps upload speeds, with at least 1.5 Mbps each way during peak hours, subject to reasonable network management practices.¹ Current CASF rules define underserved areas as areas with no wireline or wireless facilities-based provider offering service at advertised speeds of at

¹ CASF Broadband Public Housing Account Application Requirements and Guidelines at B13.

least 6 Mbps download and 1.5 Mbps upload.² While the PD requires the *network* to be *capable of offering* served level speeds (i.e., over the 6 Mbps download threshold), there is no requirement established for *applicants* to offer PSC residents served level speed tiers higher than the 1.5 Mbps minimum in case PSC residents wish to sign up for higher speeds.

The purpose of the CASF program is to bridge the “digital divide” in unserved and underserved areas in the state and encourage deployment of high-quality advanced communications services to all Californians.³ ORA therefore recommends that the Commission modify the PD to conform with the spirit and intent of the law by requiring applicants to offer broadband speeds tiers closer to served levels, such as download speeds at least between 3 Mbps and 6 Mbps to residents *at all times*. While guaranteeing increased speeds increases the cost of projects, research shows that slow broadband speeds decrease users’ engagement and, ultimately, their use.⁴ Potentially limiting residents’ access to a slow 1.5 Mbps download during peak hours creates hurdles to utilizing the full benefits of advanced telecommunications services at the times when they will be most needed, and creates an unsubstantiated differentiation between Broadband Public Housing Account subscribers and other beneficiaries of CASF-funded projects (where infrastructure-funded projects may offer multiple served-level speed tiers as an available speed tier to potential subscribers).

The Staff Report Proposing Rules to Implement Program Changes to the California Advanced Services Fund Initiated by AB 1299 (Staff Report) states that “[r]esidents will only use the Internet if they believe it is relevant to their lives. Applicants will need to provide connections at sufficient speeds to support video

² Decision Implementing Broadband Grant and Revolving Loan Program Provisions, D.12-02-015 at 17, section 3.4.2 (defining *underserved* as *up to 6Mbps*).

³ See, D.07-12-054; Pub. Util. Code § 281.

⁴ Steve Lohr, For Impatient Web Users, an Eye Blink is Just Too Long to Wait, *The New York Times*, Feb. 29, 2012, available at <http://www.nytimes.com/2012/03/01/technology/impatient-web-users-flee-slow-loading-sites.html?pagewanted=all>.

applications, including those needed for K-12 curriculum[...].”⁵ The Federal Communications Commission (FCC) notes that streaming full length video requires *at least* 1.5 Mbps, when *only one device* is utilizing bandwidth.⁶ Greater speeds are required when additional users are connecting at the same time, with speeds greater than 15 Mbps required when three or more users are connecting with two people using high demand applications.⁷ Indeed, FCC Chairman Tom Wheeler stated that a 25 Mbps connection is fast becoming “table-stakes” for broadband use at home.⁸ The Commission should take concrete steps towards reducing the digital divide by ensuring that low-income users have access to the greatest speeds possible at the times during which Internet use is most needed by resident families. The Commission can bring California closer to its goal of universal service by amending the PD to require projects to offer PSC residents download speeds of at least 3 Mbps at all times.

B. The Commission Should Amend the PD to Require Prices for Residents which are Consistent with Other Low-Income Programs’ Prices and Speed Requirements

The Guidelines require applicants to agree to charge residents no more than \$20 per month for broadband Internet service.⁹ This price point is coupled with a minimum speed standard of 1.5 Mbps during the hours most residents will be using the Internet.¹⁰ This pricing scheme stands in stark contrast to those of other low-income service programs: Comcast provides 5Mbps/1Mbps for \$9.95 per month through its Internet

⁵ Staff Report, Finding 6.

⁶ FCC Broadband Speed Guide, available at <http://www.fcc.gov/guides/broadband-speed-guide>, last visited Nov. 21, 2014.

⁷ FCC Household Broadband Guide, available at <http://www.fcc.gov/guides/household-broadband-guide>, last visited on Nov. 21, 2014.

⁸ Tom Wheeler, Chairman, Fed. Comm’n Comm’n, Remarks at National Digital Learning Day: The Facts and Future of Broadband Competition (Sept. 4, 2012) (hereinafter Wheeler Broadband Competition Remarks).

⁹ CASF Broadband Public Housing Account Application Requirements and Guidelines, *supra* note 1 at B13.

¹⁰ *Id.*

Essentials program while CenturyLink has a tiered low-income program that provides 1.5 Mbps for \$9.95, 3 Mbps for \$14.95 and 10 Mbps for \$19.95.¹¹

CD staff noted informal and formal survey responses indicating that \$10 per month was an affordable rate for broadband for low-income users, while \$20 was at the highest end of affordable range.¹² The Commission should amend the PD to include a price point that is comparable to other low-income broadband projects, particularly with reference to the speeds offered, maximizing the number of residents who will be able to take advantage of the grant-funded project's benefits.

C. The Commission Should Amend the PD to Change the First Application Deadline to a Date after the Guidelines are Approved

The Guidelines provide a number of deadlines marking cutoffs, after which all applications received before such deadlines will be evaluated as a "batch."¹³ The Commission should amend the PD to reflect that these Guidelines will not be considered for approval by the Commission until after the first project application deadline noted in the Guidelines (December 15, 2014). This deadline should be pushed back to January, 2015 to allow project work to begin as soon as possible, while allowing applicants to prepare application materials which reflect the adopted Guidelines' actual requirements.

¹¹ Comments of the Office of Ratepayer Advocates in Response to the Assigned Commissioner's Ruling Seeking Comments on the Communications Division Staff Report Proposing Rules to Implement the California Advanced Services Fund Broadband Public Housing Account at 2-3, n. 6 and n. 7, R.12-10-012, filed July 28, 2014.

¹² Staff Report Proposing Rules to Implement Program Changes to the California Advanced Services Fund Initiated by AB 1299 at 27 (Sept. 2014).

¹³ CASF Broadband Public Housing Account Application Requirements and Guidelines at B12.

III. CONCLUSION

ORA applauds the work and research that has gone into the Staff Report and Guidelines. However, the Commission should require applicants to offer residents of PSCs download speeds at least between 3 Mbps and 6 Mbps, and should require services to be offered to residents at prices more in line with current Comcast and Century Link offerings. These amendments will ensure that residents are provided broadband service that they are likely to adopt and utilize to its full extent, decreasing the digital divide between low income and other California residents. Finally, the Commission should amend the PD to push back the proposed first deadline to a date after the Guidelines have been adopted, allowing applicants to prepare applications with the Guidelines finalized for reference and clear direction.

Respectfully submitted,

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APPENDIX A

ORA's Proposed Modification to Findings of Fact: paragraphs 25 and 27

Findings of Fact:

ORA's recommendations can be implemented by changes to the PD's findings of facts, with the Guidelines edited to reflect these changes. The findings of facts should read, in pertinent part, as follows:

25. A minimum service speed of 1.5 Mbps both ways should ensure low-income families and individuals residing in publicly-subsidized housing receive appropriate speeds that will allow them to conduct meaningful activities, such as taking classes, streaming video, and conducting telehealth monitoring and consulting. Families may experience higher demands on bandwidth, particularly when more than one device is in use and at peak times. Such families may benefit from the option to access higher speed tiers, ensuring that the service is utilized to its fullest extent.

26. In balancing the need for reliable broadband access and service, residents must be able to receive reasonably fast Internet at a reasonable cost.

27. Requiring applicants to provide, at a minimum, download speeds of 1.5 Mbps during average peak utilization periods subject to reasonable network management practices is reasonable in light of applicant's additional requirements of providing low-cost Internet. Requiring applicants to offer higher broadband speed tiers, between 3 Mbps and 6 Mbps download, provides families with greater bandwidth needs the option to access the Internet fast enough to meet demands and ensure use.

28. Applicants should charge PSC residents a price point that is comparable to other low-income broadband projects, particularly with reference to the speeds offered, maximizing the number of residents who will be able to take advantage of the grant-funded project's benefits.