BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding Revisions to the California Advanced Services Fund	Rulemaking 20-08-021

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REPLY COMMENTS OF THE CALIFORNIA CABLE & TELECOMMUNICATIONS ASSOCIATION ON THE PROPOSED DECISION ADOPTING MODIFICATIONS TO CALIFORNIA ADVANCED SERVICES FUND BROADBAND INFRASTRUCTURE GRANT ACCOUNT

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Pursuant to Rule 14.3 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, the California Cable & Telecommunications Association ("CCTA") hereby submits these reply comments on the September 30, 2022 Proposed Decision ("PD") in the above-captioned proceeding regarding the California Advanced Services Fund ("CASF") Infrastructure Grant Account ("IGA").

I. INTRODUCTION

Many commenters, including CCTA, support the IGA program's goal to "provide broadband access to no less than 98 percent of California households in each consortia region."[1] However, several commenters have identified material factual, legal, and technical errors regarding the PD's proposals that undermine this statutory goal. In particular, there are errors in the proposed challenge process that may lead to finite funds being spent on wasteful overbuilding rather than connecting unserved areas. CCTA recommends that the Commission make changes to the IGA rules to correct these errors and realign the IGA program with its statutory objectives to ensure participation by entities with the financial and technical ability to rapidly expand broadband connectivity to California's unserved communities.

CCTA agrees with other commenters that the IGA rules should maximize provider participation in the IGA program. In that regard, CCTA recommends the Commission reconcile the construction timeframes in Sections 6 and 8.7 to clarify that the deadlines for construction start "following receipt of permits." CCTA also recommends that the Commission ensures funds are targeted directly to meeting the statutory goal, such as reducing the five-year pricing commitment to two years with an alternative waiver process for applicants that use nationwide pricing.[2]

[1] Pub. Util. Code § 281(b)(1)(A). All further Section references are to the California Public Utilities Code, unless otherwise stated.
[2] *See* AT&T Comments at 1-2.

However, suggestions to create a definition of "unserved areas" would conflict with the plain language of IGA statute, Section 281, and thereby result in legal error as well as potentially limit broad provider participation, and the Commission should reject such changes. Similarly, proposals to incorporate affordability metrics into the IGA program at this point would also result in legal error. Moreover, if adopted, these proposals would run contrary to the program goals by sending limited grant funding to areas that already have broadband service far in excess of the minimum broadband speeds established by the Legislature. These concerns are detailed below.

II. DISCUSSION

A. Commenters oppose the unnecessarily complex, unlawful, and irrelevant proposed modifications to the challenge process.

The purpose of the IGA program is to expand broadband availability to unserved areas,[3] and the purpose of the challenge process is to allow challengers "the opportunity to demonstrate actual levels of broadband service."[4] Commenters have made clear that the PD's proposed changes to the challenge process overrides this simple and straightforward statutory directive in unlawful and unhelpful ways. The Commission should reject these changes to avoid legal error.

Instead of pursuing the proposed modifications to the IGA challenge process which contravene the law,[5] Frontier recommends retaining the current challenge process. Frontier correctly identifies errors with both the proposed billing statement submission requirement as not reflective of existing network capabilities and the attestation requirement as tangential and unnecessary.[6] CCTA agrees with Frontier that rendering the challenge process more prescriptive and complex will create needless difficulties for challengers and increase the likelihood that funds will be wasted on overbuilding rather than connecting unserved areas.[7] CCTA also agrees that requiring challengers to mirror applicants' service specifications is not consistent with the IGA statute and, notably, will result in poor public policy with inequitable results.[8] Adopting challenge rules that go beyond the statute (i.e. are unrelated to whether a location has broadband service of at least of 25/3 mbps) will divert funding from rural areas to already-served areas, contrary to the stated objectives of the IGA program.

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[3] *See* Section 281(b)(1)(A).
[4] Section 281(f)(8).
[5] *See* Frontier Comments, at 2-4; Small LECs Comments at 4.
[6] Frontier Comments at 2-3.
[7] Frontier Comments at 3.
[8] *See* Section 281(f)(8) (noting absence of language about mirroring to applicants' service specifications).

Likewise, the Small LECs level similar critiques of the proposed challenge process. They oppose (1) the customer billing requirement, including concerns regarding confidentiality and customer privacy;[9] (2) the requirement that challengers offer equivalent service offerings and pricing because these requirements threaten their ability to mount a successful challenge despite serving the area;[10] and (3) the 21-day window to submit a challenge as insufficient to comply with the Commission's onerous challenge requirements.[11] The Small LECs suggest a simplified challenge process that would be an improvement on the proposed challenge process. CCTA agrees with the Small LECs' critiques and with their suggestion that challengers should be required to produce "one appropriately redacted customer bill per census block with service at or above 25/3 Mbps."[12] This change, along with others CCTA proposed to Section 11, will bring the challenge process into alignment with the statutory requirements and better serve the public interest.

Along with several CCTA members, these commenters are past CASF grant recipients with familiarity of the grant process and a strong sense of fairness, having been both grant recipients and challengers. They recognize that an efficient challenge process affords a fair opportunity for providers to challenge in accordance with the law and is an integral part of allocating IGA funds in a way that maximizes the benefits for unserved communities. The Commission should heed these critiques of the proposed modifications to the challenge process and adopt the modifications as set forth in Appendix A of CCTA's opening comments to avoid error. Most critically, the Commission should remove unlawful requirements for challengers to offer same or better price plans and strike burdensome rules to provide all customer billing statements [13]

B. Applying affordability metrics at this point would distort affordability efforts and violate due process.

CCTA supports efforts to ensure low-income Californians have access to low-price broadband service, including the Public Advocates Office's recommendation to require grantees to participate in the

[9] Small LECs Comments at 4 ("[C]oncerns about confidentiality persist. … Explicit assurances of nondisclosure and additional directions for challengers to remove 'names, phone numbers, and email addresses' are inadequate to avoid parties' obligations with respect to customer privacy, if the customers' addresses are to remain unredacted.").
[10] Small LECs Comments at 6.
[11] Small LECs Comments at 3.
[12] Small LECs Comments at 3. *See also* Opening Comments of Calaveras Telephone Company et al. on the Assigned Commissioner's Ruling Addressing Proposed Modifications to the California Advanced Services Fund Broadband Infrastructure Grant Account Program Rules and Guidelines, R.20-08-021, June 27, 2022, at 10.
[13] *See* CCTA Comments, Appendix A at 2-3.

Affordable Connectivity Program ("ACP") program.[14] This is in line with Federal Funding Account program requirements for their qualifying projects.[15] The PD also appropriately defers addressing affordability metrics in the IGA program.[16]

Contrary to this reasonable approach, TURN would have the Commission immediately apply the affordability metrics to the IGA with an entirely new proposal in a way that would create unequal rates for similarly situated low-income customers across California geographies.[17] Also, in adopting D.22-08-023, the Commission already stated that affordability would be addressed in "future" phases of active proceedings, which this is not.[18] Further, the Commission recognized that the affordability metrics must be adjusted before being implemented in specific programs.[19] Indeed, an Assigned Commissioner's Ruling was just recently issued, requesting comments regarding several key aspects of the affordability metrics in the affordability proceeding (R.18-07-006), including the interpretation of the affordability framework in individual Commission proceedings.[20] It would be premature to redefine affordability in this PD while the Commission is still in the process of assessing the affordability metrics. Accordingly, the Commission should reject TURN's proposal.

C. The Commission should adopt the statutory definition of "unserved area" without modification.

CCTA agrees with the National Diversity Coalition ("NDC") that the phrase "entire service area" in the definition of "unserved area" is vague.[21] However, CCTA disagrees with the proposed solution to identify individual properties as unserved even if other properties in the same "area" are served. This proposal would not be a solution, but rather, it would create more problems in that locations are often

[14] Public Advocates Office Comments at 2-4.
[15] D.22-04-055, Appendix A at A-12.
[16] PD at 26.
[17] TURN Comments at 3.
[18] Decision Implementing the Affordability Metrics, D.22-08-023, August 4, 2022, at 87, Ordering Paragraph 10 ("Beginning 30 days after the issuance of this decision, future phases of the Commission's Rulemaking 20-08-021 distributing funding of the California Advanced Services Fund (CASF) should incorporate the Commission's most recent release of affordability metrics for essential communications service by community and identify Areas of Affordability Concern relative to communities considered for funding through the CASF.").
[19] Decision Implementing the Affordability Metrics, D.22-08-023, August 4, 2022, at 24 ("The specific program proceedings, rather than the annual Commission-sponsored updates to the metrics, are the appropriate venue because they allow stakeholders to examine the value and structure of various discounts as necessary.").
[20] *See* Assigned Commissioner's Ruling Seeking Comment on the Use and Interpretation of the Affordability Framework, R.18-07-006, October 13, 2022.
[21] National Diversity Coalition Comments at 5-6.

unserved due to right-of-entry issues, permitting, and other issues that an IGA grant will not solve.[22] An applicant seeking to serve an "unserved" individual property would likely face the same issue as the existing provider serving the neighboring addresses and thus result in an imprudent use of public funds. "Unserved area" is a statutorily defined term, and inclusion of the additional term "entire service area" or even "area" would amount to an unlawful modification of the statute. Therefore, the Commission should strike the term "entire service area" from the definition of "unserved area" and adhere closely to the statutory definitions, which provide the strongest foundation for administering the program.

III. CONCLUSION

CCTA appreciates this opportunity to comment on this matter and urges the Commission to adopt its recommendations.

Respectfully submitted,

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[22] *See, e.g.*, Comments of the California Cable and Telecommunications Association on the Assigned Commissioner's Second Amended Scoping Memo and Ruling Phase IIA Issues, R.20-08-021, April 1, 2022, at 5 ("Permitting obstacles are a frequent and ongoing source of delay and added cost for broadband deployment by private ISPs, creating major impediments to the state's broadband goals."); Opening Comments of Charter Fiberlink CA-CCO, LLC (U-6878-C) and Time Warner Cable Information Services (California), LLC (U-6874-C) on the August 6, 2021 Assigned Commissioner's Ruling, R.20-09-001, September 3, 2021, at 14 ("Charter has encountered numerous instances in which property managers, acting as gatekeepers, prevent Charter from accessing, and extending broadband service to, multi-dwelling units ('MDUs') and mobile home parks.").