

Decision **PROPOSED DECISION OF COMMISSIONER HOUCK**
(Mailed 1/29 /2024)

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

**DECISION ADOPTING MODIFICATIONS TO BROADBAND
PUBLIC HOUSING ACCOUNT AND TRIBAL TECHNICAL
ASSISTANCE PROGRAM RULES AND GUIDELINES**

Summary

This decision adopts modifications to the Broadband Public Housing Account and Tribal Technical Assistance program rules and guidelines. Modifications to the Broadband Public Housing Account expand eligibility for non-publicly supported housing developments and for project costs to facilitate deployment of broadband networks in low-income communities that lack access to free broadband service that meets state standards. Modifications to the Tribal Technical Assistance program include updates to align with the Local Agency Technical Assistance program rules and guidelines.

This proceeding remains open.

1. Background

The Broadband Public Housing Account (BPHA) provides grants and loans to support the deployment of broadband infrastructure and adoption

programs in eligible publicly supported housing communities.¹ The California Public Utilities Commission (Commission) adopted rules and guidelines for the BPHA in Decision (D.) 14-12-039, and last modified the BPHA rules and guidelines in D.22-05-039 to implement changes enacted by Senate Bill (SB) 156 (Stats. 2021, Ch. 112) and programmatic changes for publicly supported housing developments, including farmworker housing.

The Tribal Technical Assistance (TTA) program provides grants to assist California Tribes in developing market studies, feasibility studies, and/or business plans to support Tribes' pursuit of improved communications. The Commission adopted rules and guidelines for the TTA program in D.20-08-005.

On April 27, 2023, the assigned Commissioner issued a ruling inviting comments on a staff proposal to modify the BPHA rules and guidelines to (1) establish eligibility of non-publicly supported housing developments and associated rules and provisions, and (2) expand project eligibility and the scope of costs eligible for reimbursement to facilitate deployment of broadband networks in low-income communities that lack access to free broadband service that meets state standards. National Diversity Coalition (NDC), California Broadband & Video Association (CalBroadband), Center for Accessible Technology (CforAT), City and County of San Francisco (CCSF), and The Utility Reform Network (TURN) timely filed comments to the April 27, 2023 ruling. NDC, CalBroadband, and TURN and CforAT (jointly) timely filed reply comments.

¹ The \$5 million dedicated to broadband adoption through the BPHA was fully allocated as of October 17, 2018. Assembly Bill 1665 (Stats. 2017, Ch. 851) authorized applicants eligible for BPHA funding for adoption projects to apply to the Broadband Adoption Account once the funds available for BPHA Adoption projects had been exhausted.

On November 28, 2023, the assigned Commissioner issued a ruling inviting comments on a revised staff proposal for the BPHA rules and guidelines, and a staff proposal to modify the TTA program rules and guidelines to reflect key updates to the award thresholds, eligible uses, and other updates to incorporate key elements from the Local Agency Technical Assistance program. TURN, CforAT, CCSF and Charter Communications Operating, LLC (Charter) timely filed comments to the November 28, 2023 ruling. TURN timely filed reply comments; CETF on December 8, 2023 submitted comments to the Commission's Public Advisor's Office, which TURN's reply comments respond to in part. Sections 4 and 5 of this decision address party comments to each staff proposal as they relate to the rules and guidelines that we adopt for the BPHA and the TTA program.

1.1. Submission Date

This matter was submitted on December 13, 2023, upon receipt of reply comments to the November 28, 2023, ruling.

2. Jurisdiction

The Commission's authority under California Public Utilities Code (Pub. Util. Code) Section 281 *et seq.*, as amended by SB 156, includes administration of the BPHA. Specifically, Pub. Util. Code Section 281, subdivision (i) defines "low-income community" as including but not limited to "publicly supported housing developments, and other housing developments or mobilehome parks with low-income residents, as determined by the commission," and provides that BPHA funds "shall be available for grants and loans to low-income communities to finance projects to connect broadband networks that offer free broadband service that meets or exceeds state standards, as determined by the commission, for residents of the low-income communities." Pub. Util. Code Section 281,

subdivision (i) further specifies that the Commission shall approve projects “in a manner that reflects the statewide distribution of low-income communities” to the extent feasible; “consider the availability of other funding sources;” and prioritize grants to “existing publicly supported housing developments that have not yet received a grant...and do not have access to free broadband internet service onsite.”

3. Issues Before the Commission

The issues addressed by this decision are whether to adopt the revised staff proposal for modifications to the BPHA rules and guidelines, and whether to adopt the staff proposal for modifications to the TTA program rules and guidelines. This decision adopts both staff proposals, with the modifications discussed herein. The adopted version of each staff proposal, which is modified to serve as the BPHA rules and guidelines and the TTA program rules and guidelines respectively, is included with this decision as Attachment 1 (BPHA rules and guidelines) and Attachment 2 (TTA program rules and guidelines).

4. Revised Staff Proposal for Modifications to the BPHA Rules and Guidelines

The revised staff proposal for the BPHA reflects Commission staff’s modifications and clarifications to the staff proposal attached to the April 27, 2023 ruling, in response to party comments to that staff proposal. The staff proposal included with the April 27, 2023 ruling proposed modifications to (1) establish eligibility of non-publicly supported housing developments, and associated program rules and provisions, and (2) expand project eligibility and the scope of costs eligible for reimbursement to facilitate deployment of broadband networks in low-income communities that lack access to free broadband service that meets state standards.

TURN and CforAT generally support the revised staff proposal, with CforAT expressing support specifically for the proposed requirements for open access and end-of-service-life dates of networking equipment.² CCSF states it looks forward to expanding its Fiber to Housing program, which currently offers free broadband service to over 15,400 units of affordable housing, with additional support from the BPHA.³

4.1. Eligibility of Non-Publicly Supported Housing Developments

The revised staff proposal includes modifications, including definitions for “low-income”, “Mobilehome”, “Mobilehome park”, “Other Housing Developments”, “sovereign tribal government”, and “Tribally Designated Housing Entity” to establish eligibility criteria for non-publicly supported housing developments.

CCSF recommends changing the threshold for demonstrating the low-income status of residents as part of “Other Housing Development” from 80 percent to 51 percent. CCSF suggests that demonstrating the low-income status of 80 percent of residents would be prohibitively challenging, especially for privately owned for-profit single residence occupancy (SRO) developments. Alternatively, CCSF recommends revising the eligibility criteria to include all “Other Housing Developments” located in census block groups with “very low

² *Opening Comments of The Utility Reform Network on the Assigned Commissioner’s Ruling Inviting Comments on Staff Proposals for Modifications to Broadband Public Housing Account Rules and Guidelines and Tribal Technical Assistance Program Rules and Guidelines*, filed December 8, 2023 (TURN comments), at 1; and *Comments of Center for Accessible Technology on Assigned Commissioner’s Ruling Inviting Comment on Staff Proposals for Modifications to Broadband Public Housing Account Rules and Guidelines and Tribal Technical Assistance Program Rules and Guidelines*, filed December 8, 2023 (CforAT comments), at 1 and 3-4.

³ *Comments of the City and County of San Francisco on Staff Proposal for Modifications to Broadband Public Housing Account Rules and Guidelines*, filed December 8, 2023 (CCSF comments), at 1.

income” as identified for each county by the Department of Housing and Community Development. CCSF also recommends clarifying the definition for “low-income community” to include privately owned buildings within “Other Housing Developments” and allowing local governments to apply for grants on behalf of low-income census block groups.⁴ While we are sympathetic to enabling CCSF to extend its support for affordable housing developments through its Fiber to Housing program, we are not at this time inclined to grant categorical eligibility to all SRO developments without also considering additional requirements to ensure effective utilization and responsible stewardship of BPHA funds. It is important to note that SRO developments that meet the definition for “Other Housing Development” will be eligible to apply for and receive BPHA funds. We do however agree with CCSF’s request to clarify that local governments may apply for grants on behalf of low-income census block groups; we have modified the revised staff proposal to include this provision.

4.2. Clarification of Obligation to provide free Broadband Service

The revised staff proposal removes references to “no cost” and instead consistently references “free” service, but does not alter the existing provision that applicants agree to provide broadband service at no cost to residents of the low-income community.

CforAT states the Commission may wish to clarify that the obligation to provide free broadband service is not dependent on public purpose subsidies or other funding.⁵ CCSF raises a related concern, requesting we clarify that free

⁴ CCSF comments, at 2-4.

⁵ CforAT comments, at 2-3.

service requirements cannot rely on the Affordable Connectivity Program.⁶ The Commission's intent is for BPHA grant recipients to provide broadband service at no cost to residents of the low-income community, without public purpose subsidies or other funding, which is consistent with our determination in Resolution T-17775 that "no cost" means unsubsidized service that is free to customers. We have modified the revised staff proposal to make this clarification.

4.3. Other issues raised by parties

Parties raise several other issues in comments on the revised staff proposal.

Charter recommends that the BPHA prioritize projects that specifically target locations lacking high-speed broadband, and echoes support for the May 19, 2023 comments filed by CalBroadband.⁷ CCSF recommends instead prioritizing very low-income communities by directing the first round of funds to these communities.⁸ We are not at this time inclined to specify prioritization criteria, noting that Commission staff would only employ prioritization criteria in the event that the amount of support requested by eligible projects exceeds the amount of funds available in the BPHA. In that event, we generally agree with NDC's recommendation, in response to the original staff proposal, to prioritize projects that serve areas with the lowest median income and projects serving the

⁶ CCSF comments, at 5.

⁷ *Opening Comments of Charter Communications Operating, LLC on the Assigned Commissioner's Ruling*, filed December 8, 2023 (Charter comments), at 2.

⁸ CCSF comments, at 4.

highest number of low-income residents.⁹ Section 2 of the revised staff proposal reflects the prioritization criteria staff will employ in the event that eligible funding requests exceed available funds.

TURN recommends requiring BPHA Internet Extension applicants to consult with facilities-based internet service providers (ISP), given the need to discuss technology compatibility in the planning process. TURN further asserts the receiving facilities-based ISP should be required to attest to complying with the BPHA Internet Extension program rules. The Commission agrees that it is important, where technology compatibility is an issue, for applicants to consult with facilities-based ISPs in the planning process. The Commission does not specify the type of technology that applicants must utilize, and compatibility may not necessarily be an issue for every project; therefore we decline to make this a requirement of every applicant. Projects receiving grant funding must connect broadband networks that offer free broadband service that meets or exceeds state standards, as determined by the Commission, for residents of the low-income communities. Commission staff will include guidance in the BPHA application materials instructing applicants to ensure technology compatibility, where applicable.

TURN also recommends requiring 72-hour battery back-up for both BPHA Infrastructure and BPHA Internet Extension projects, citing D.21-02-029's requirement for wireless and wireline communications service to have 72-hour battery back-up in high fire-threat areas, and noting that residents may come to rely on the broadband network for 9-1-1 services and other essential

⁹ *Opening Comments of the National Diversity Coalition on the Assigned Commissioner's Ruling Inviting Comments on Proposed Modifications to Broadband Public Housing Account Program*, filed May 19, 2023, at 5-6.

communication needs.¹⁰ The Commission agrees it is important for BPHA projects to enable access to essential communication needs, including 9-1-1 services. At the same time, we recognize that BPHA projects rely on upstream (e.g., middle-mile) Internet availability, and the Broadband Infrastructure Grant Account (IGA) does not currently require battery back-up for projects funded by that account. For consistent implementation, we defer consideration of TURN's recommendation unless and until we address such a requirement for IGA projects.

5. Staff Proposal for TTA Program Rules and Guidelines

The staff proposal for modifying TTA program rules and guidelines proposes updates to the award thresholds, eligible uses, and other updates to incorporate key elements from the Local Agency Technical Assistance (LATA) program into the TTA program.

TURN is the only party to address the TTA staff proposal. TURN generally supports the staff proposal, in particular increasing the maximum grant amount from \$150,000 to \$250,000 per fiscal year, the requirement for TTA-supported infrastructure to provide at least 25 megabits per second (Mbps) download and 3 Mbps upload and increasing the non-exhaustive list of eligible activities for reimbursement. TURN recommends clarifying that Tribal Consortia are eligible entities, as the LATA program has awarded a grant to a Tribal consortium.¹¹ TURN also recommends exempting wholly owned tribal entities from the rule

¹⁰ TURN comments, at 1-2.

¹¹ TURN comments, at 3, with reference to the Southern California Tribal Chairmen's Association (SCTCA). SCTCA applied for LATA as a Tribal non-profit organization. Tribal consortia refer to any multi-Tribal organization such as the Southern California Tribal Chairmen's Association and any future Tribal Consortia that may be established pursuant to PU Code § 281(g)(1).

prohibiting engagement with entities that “have a financial interest,” suggesting the intent of this prohibition is to dissuade predatory entities from appropriating TTA funds and asserting it should not become a barrier for TTA applicants to work with wholly-owned Tribal entities that may have a financial interest in the work product. Finally, TURN recommends eliminating references to “unserved communities” or, alternatively, to allow TTA-funded work products in underserved and served communities adjacent to unserved communities, consistent with the recently adopted provisions for the Loan Loss Reserve program.

The Commission agrees with TURN’s recommendation to clarify that Tribal Consortia are eligible to apply for and receive TTA grants, particularly for development of deliverables / work products that are not eligible for reimbursement under the Rural and Urban Regional Broadband Consortia Account. We also agree with TURN’s recommendation to exempt wholly owned tribal entities from the rule prohibiting engagement with entities that “have a financial interest,” as TTA grants are intended to benefit wholly owned tribal entities, which may have a financial interest in the TTA-supported work product(s). We have modified the TTA staff proposal to reflect these modifications. With respect to TURN’s recommendation to remove reference to “unserved communities”, we prefer, at this time, to maintain alignment with the LATA program rules and guidelines, which provide grant funding to tribes in their pursuit of the provision of service to unserved communities.

6. Summary of Public Comment

Rule 1.18 of the Commission’s Rules of Practice and Procedure allows any member of the public to submit written comment in any Commission proceeding using the “Public Comment” tab of the online Docket Card for that proceeding

on the Commission's website. Rule 1.18(b) requires that relevant written comment submitted in a proceeding be summarized in the final decision issued in that proceeding. No public comments addressing either staff proposal were submitted as of the submission date for this decision.

7. Comments on Proposed Decision

The proposed decision of Commissioner Darcie L. Houck in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were timely filed by CalBroadband and NDC, and reply comments were timely filed by TURN. Comments on the proposed decision focused on proposed changes to the BPHA and did not address the staff proposal for the TTA program. We have revised the proposed decision in response to party comments as summarized here:

- Confirm, for BPHA Internet Extension projects, the obligation to maintain the network and provide free broadband service for a minimum of five years after project completion, and other obligations consistent with those for BPHA Infrastructure projects.¹²
- Require grantees to attest to the status of free broadband service after project completion, in KPI reports.¹³
- Correct/clarify that staff will employ prioritization criteria, in general agreement with NDC's recommendations regarding the

¹² *Comments of the California Broadband & Video Association on the Proposed Decision Adopting Modifications to Broadband Public Housing Account and Tribal Technical Assistance Program Rules and Guidelines*, filed February 20, 2024, at 2-3.

¹³ *Opening Comments of the National Diversity Coalition on the Proposed Decision of Commissioner Houck Adopting Modifications to Broadband Public Housing Account and Tribal Technical Assistance Program Rules and Guidelines*, filed February 20, 2024 (NDC comments to PD), at 5-6.

original staff proposal, in the event that eligible funding requests exceed available funds.¹⁴

- Modify findings and conclusions to explicitly support adopting the increased thresholds for ministerial review and approval, and reimbursement of interconnection and backhaul costs.¹⁵

NDC makes several recommendations that we decline to adopt; this decision confirms that parties had opportunity to comment on both the original staff proposal and the revised staff proposal, and the adopted changes to existing rules and guidelines are based on our consideration of formal comments submitted in this proceeding. Specifically:

- The April 27, 2023 ruling explained that “[t]he last two rounds of Public Housing Account grant applications have shown an increase in projects that request more than is allowable under the [current] criteria for total dollar amounts and In-Unit caps,” and invited comment on justification of a higher cap for all applications processed for ministerial review.¹⁶ In response to the original staff proposal, TURN supported the increased thresholds for ministerial review and approval, stating these increases would increase the program’s efficiency by permitting staff to approve more projects

¹⁴ NDC comments to PD, at 6-7.

¹⁵ *Reply Comments of The Utility Reform Network on the Proposed Decision Adopting Modifications to Broadband Public Housing Account and Tribal Technical Assistance Program Rules and Guidelines*, filed February 26, 2024, at 2-3 and Appendix A.

¹⁶ *Assigned Commissioner’s Ruling Inviting Comments on Proposed Modifications to Broadband Public Housing Account Program*, issued April 27, 2023, at 2 (Question 1 and 1.a).

via ministerial review (as opposed to draft resolutions);¹⁷ and CCSF stated these increases will more accurately reflect expected costs for a broadband installation.¹⁸ None of the comments addressing the revised staff proposal raised issue with the increased thresholds included in the revised staff proposal.¹⁹

- In response to the original staff proposal, CforAT stated that the BPHA should cover construction of interconnection routes for all applicants that are unable to secure affordable interconnection access, noting that projects may increasingly have difficulty in securing affordable interconnection access as a result of a recent Federal Communications Commission order.²⁰ None of the comments addressing the revised staff proposal explicitly raised issue with the revised staff proposal's provisions to reimburse costs for interconnection or backhaul services.
- The original staff proposal provided details regarding existing eligibility requirements applicable to publicly supported housing developments, tribal housing developments, and farmworker housing.²¹ We do not wish for BPHA rules and guidelines to

¹⁷ *Opening Comments of The Utility Reform Network on the Public Housing Account Modification Rules*, filed May 19, 2023, at 2-3.

¹⁸ *Comments of the City and County of San Francisco on Proposed Modifications to Broadband Public Housing Account Program*, filed May 19, 2023, at 3.

¹⁹ NDC did not submit comments in response to the revised staff proposal.

²⁰ *Comments of Center for Accessible Technology on Assigned Commissioner's Ruling Inviting Comments on Proposed Modifications to Broadband Public Housing Account Program*, filed May 19, 2023, at 4-6.

²¹ NDC comments to PD, at 9-11. See April 27, 2023 ruling, attachment (original staff proposal) at 21-22.

supersede or conflict with eligibility and other requirements applicable to publicly supported housing developments, tribal housing developments, and farmworker housing.

- In response to the original staff proposal, CforAT argued that the proposed support for local public WiFi networks in low-income communities is consistent with the legislature's intent for the BPHA, noting that Public Utilities Code section 218(i)(2) does not require the Commission to restrict support to residents of low-income communities, and section 218(i)(3) does not restrict the provision of free broadband service to residents of low-income communities.²²

The revised staff proposal nevertheless reflects modifications to more closely align with the intent to support Internet access for residents in low-income communities. None of the comments addressing the revised staff proposal explicitly asserted that the rules and guidelines for Internet Extension projects conflict with the BPHA's statutory intent. This decision confirms that Internet Extension projects are intended to serve residents in low-income communities and eligible BPHA Infrastructure grantees.

8. Assignment of Proceeding

Darcie L. Houck is the assigned Commissioner and Valerie U. Kao is the assigned Administrative Law Judge in this proceeding.

²² *Reply Comments of Center for Accessible Technology and The Utility Reform Network on Assigned Commissioner's Ruling Inviting Comments on Proposed Modifications to Broadband Public Housing Account Program*, filed May 26, 2023, at 6-7.

Findings of Fact

1. The staff proposal for BPHA rules and guidelines proposes to increase the total project cap and per-unit cap for ministerial review and approval; establish eligibility of non-publicly supported housing developments and associated rules and provisions; and expand project eligibility and the scope of costs eligible for reimbursement of interconnection and backhaul costs to facilitate deployment of broadband networks in low-income communities that lack access to free broadband service that meets state standards.

2. The staff proposal for TTA program rules and guidelines proposes updates to align with LATA program rules and guidelines.

Conclusions of Law

1. It is reasonable to modify the BPHA rules and guidelines to increase the total project cap and per-unit cap for ministerial review and approval; and to expand eligibility for non-publicly supported housing developments and for project costs to include interconnection and backhaul costs, to facilitate deployment of broadband networks in low-income communities that lack access to free broadband service that meets state standards.

2. It is reasonable to modify the TTA program rules and guidelines for consistent implementation and administration of grants to facilitate development of essential broadband services.

O R D E R**IT IS ORDERED** that:

1. The modified Broadband Public Housing Account rules and guidelines are adopted as shown in Attachment 1 to this decision.

2. The modified Tribal Technical Assistance program rules and guidelines are adopted as shown in Attachment 2 to this decision.

3. Rulemaking 20-08-021 remains open.

This order is effective today.

Dated _____, at San Francisco, California.