

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

Order Instituting Rulemaking on the
Commission's Own Motion to Comply
with the Mandates of Senate Bill 1563
regarding deployment of Advanced
Telecommunications Technologies.

Rulemaking 03-04-003

**REPLY COMMENTS ON COMMISSIONER BROWN'S ALTERNATE
DECISION BY THE CALIFORNIA COMMUNITY
TECHNOLOGY POLICY GROUP AND LATINO ISSUES FORUM**

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California Community Technology Policy Group and Latino Issues Forum (“the Commenters”) have reviewed the comments on Commissioner Brown’s Alternate Decision and the Intervenors Opening Comments and urge that Commissioner Brown’s Alternate Decision be accepted with modifications.

The establishment of sound public policy should rest on rigorous relevant data. Without relevant data issues we cannot say where broadband is or is not available. We cannot determine whether there is competition in the broadband market based on current faulty FCC data.¹ The ILECS in this proceeding assert that competition is robust. However they and the Final Draft Report rely on faulty FCC data in asserting that broadband competition exists. We again commend the Commission for requesting data from broadband providers that would have more fully provided data to establish whether competition exists. Given the absence of this data in either the Final Draft Decision or the Alternate Draft Decision we must assume that the initial request for data was not fully provided by broadband providers. The Commenters have provided data that demonstrate that many communities are being left out of the broadband world and the opportunities that it provides.² While the Final Draft Decision includes some of this data its conclusions do not address the problems raised by this new data. The Commenters believe that digital divide data suggests a market failure to reach low income, ethnic, rural and disabled communities. It is critical that the Commission not make a decision

¹ Comments By The California Community, Technology Policy Group, The Broadband Institute of California, and Latino Issues Forum, February 28, 2005, p. 19-22, Reply Comments By The California Community, Technology Policy Group, The Broadband Institute of California, And Latino Issues Forum, February 28, 2005, p. 3-5.

² Comments by The California Community, Technology Policy Group, The Broadband Institute of California, and Latino Issues Forum, February 28, 2005, p. 22- 26, Reply Comments by The California Community, Technology Policy Group, The Broadband Institute of California, and Latino Issues Forum, February 28, 2005, p. 3-5.

that does not address this market failure. Such a decision would have the unintended result of promoting policies that would further harm these communities. We recommend that the Alternate Decision include a recommendation that supports broadband mapping in California. As a matter of fact, SB 850 (Escutia) mandates broadband mapping in California, which will provide the needed information, and we urge the commission to support the pending legislation.³

On March 16, 2004, Latino Issues Forum and the California Community Technology Policy Group filed a motion requesting an evidentiary hearing.⁴ This motion was denied and in its place a Full Panel meeting was held.⁵ While the Full Panel Meeting provided additional important information, the Final Draft Report does not address many of the issues raised in the Full Panel meeting. An evidentiary hearing would have more fully explored broadband deployment, competition and provided a more detailed record. Competition is central to many of the Commission's current proceedings and we urge the Commission to not continue to rely on flawed FCC data on which to base their decisions. Establishing a baseline of broadband deployment is essential in establishing broadband policy in California.

The Commenters agree with TURN's assertion that while the Brown Alternate Decision is not comprehensive it serves as a superior starting point to address the

³ In its Opening Comments to the Alternate Decision Verizon criticizes the Alternate Decision for providing a summary of legislation currently being considered but in its Opening Comments to the Draft Report, February 22, 2005 p.6 they themselves point to AB 903 (De La Torre). While they correctly note that many of these bills will in fact be revised, that they may or may not be passed by the legislature, and they may or may not be signed into law by the Governor that does not make them irrelevant to the SB 1563 Proceeding. In fact pending legislation indicates a sustained interest on the part of the legislators sponsoring said legislation. We therefore welcome the Alternate Decision summary of current legislation being considered.

⁴ Motion of the Latino Issues Forum and the California Community Technology Policy Group, March 16, 2004.

⁵ Scoping Memo and Ruling Responding to Motion of Latino Issues Forum and The California Community Technology Policy Group, April 3, 2003.

mandates of SB 1563. It more fully articulates the barriers to broadband deployment and use and provides a plan for moving forward. It recognizes key provisions of Code 709 that make it clear that broadband is a state priority and the current proceeding is a mandate to advance this priority.

We concur with Disability Rights Advocates that the Alternate Draft decision more clearly addresses cost of broadband as a barrier.⁶ In addition, the Commenters agree with TURN that “another important difference between the Alternate Decision and the Modified Draft is that the Alternate Decision recognizes increased deployment by itself may not lead to increased broadband use.” TURN noted that the Alternate Decision finds that “price, insufficient training and knowledge, the perception of or experiences with unreliable service and insufficient information about broadband availability are barriers to further use.”⁷ For the most part broadband providers in this proceeding are silent on this issue. We recommend that Commission Brown expand on these topics.

It is precisely for these reasons that an expansion of the Teleconnect Fund is so important. We agree with the Final Draft Decision that the Commission should examine and review the current effectiveness of the state’s universal service programs. A piecemeal review has been proposed through SB 1276 (Bowen, 2004), with its review of the High-Cost Fund-B, and the Supplemental Report of the 2004 Budget Act, which requires the Commission to examine the effectiveness of the California Teleconnect Fund (CTF). A more comprehensive review of universal service programs should examine

⁶ Comments of Disability Rights Advocates on the Alternative Draft Report entitled “Broadband Deployment in California,” April 28, 2005, p. 5.

⁷ Comments of the Utility Reform Network on Commissioner Brown’s Alternate Draft Report entitled “Broadband Deployment in California, April 28, 2005, p. 4-5.

how best to use the funds to address the current disparities in broadband availability, affordability, accessibility, and use.

For example, a review should look into supporting the adoption of broadband by community-based organizations (CBOs). As mentioned in earlier opening comments by DRA and the CTFC, there are other reasons for the lack of broadband use and access to broadband is only one component of the digital divide. Barriers to broadband use, as well as to the use of computers and the Internet, can be reduced with the help of well-trained staff from CBOs that offer computer training. CBOs serve as the training wheels for those just beginning to learn to use these technologies. An effective training program can show how these technologies create opportunities and enhance lives. As a result, once users become more familiarized, they are not as hesitant to use computers or the Internet on their own. By doing so, these CBOs can serve as a place where residents of underserved communities adopt and use broadband.

As a result, a review of the universal service programs should incorporate ways CBOs could adopt broadband to expose their constituents to broadband. Further, affordable broadband access is only one component; the equipment and training programs are the other component. This latter component can be addressed through CBOs and supported through grant programs, which have been bolstered by the Report and other parties. We respectfully point out that AB 855 (Firebaugh, 2003) seeks to establish such a grant program. The Commenters recommend that this grant program be carried out with all due speed by the Commission. Moreover, community technology programs can also be supported through such foundations as CTFC, which was created through Commission action initiated by the merger of SBC and Pacific Telesis. Since the

Community Partnership Agreement, CTFC has awarded millions of dollars to assist CBOs integrate technology into their programs, introducing thousands of underserved residents to technology. This two-pronged approach—a review of universal service programs and funding for equipment and training programs—will help increase the use of broadband and other technologies.

We disagree with SBC, Verizon and others who claim that the Commission is attempting to regulate DSL by mandating them to provide discounts for DSL service that the CTF program will pay for. Ever since the California Legislature approved SB 1863 and SB 720, the Governor signed these bills into law (chapter 531 of statutes 2003), and the Commission approved the rules T-16742. During this time the Commenters have worked quietly with representatives of SBC, Verizon, and AT&T to insure that DSL discounts would be provided to CTF eligible entities. At the same time the Commission has made it clear that they were not attempting to regulate DSL, they were simply mandating that telecommunication discounts be provided. At least one small DSL provider has honored California's law and the Commission's ruling. In the meantime many community-based organizations that have chosen DSL as the appropriate technology and have been approved for CTF discounts now find themselves not being able to find a DSL provider who will honor the law. We therefore support the Alternate Decision to enforce DSL discounts.

Along with DRA, the Commenters also note and support the discussion of consumer protection in the Alternate Decision and the “recommendation for regulation with respect to consumer protection and service.”⁸ The Commenters address this issue in the Original and Reply Comments to the Draft Decision, and in our own Opening

⁸ DRA Opening Comments on Commissioner Brown's Alternate Decision, p. 4.

Comments on the Alternate Decision. As we noted in our Opening Comments to the Alternate Decision, “the Communities For Telecom Rights Project is a network of over 40 community based organizations, facilitated by Latino Issues Forum, that provides consumer education and complaint resolution at no cost to limited English-speaking and low income consumers.” This project has demonstrated that new communications technologies will continue to present challenges for both consumers and providers.

While we agree that consumer choice depends on competition, it is also clear that there is a vital role for the regulatory process to ensure strong consumer protections. Consumers should not have to go to multiple agencies to have their concerns addressed.”

Finally we once again request that the Alternate Decision incorporate the following recommendations into its report.

- Adopt a recommendation for a Broadband Task Force
- Review broadband as a basic service

CONCLUSION

The regulation framework for new telecommunication policy is not a settled area of law. It is constantly evolving. It is an area of great debate by academics, policymakers, the courts, telecommunication providers, and the general public. We therefore disagree with the comments made by SBC and Verizon that portray the issues the Commission must decide upon as having already been settled. We encourage the Commission to deliberate the issues before it. The Commission’s responsibility is ultimately to do what is best for the diverse populations of California. We look forward to your leadership in this important task. We agree with the Office of Ratepayers Advocates who “support the

proposition that improving regulation, rather than viewing it as an obstacle to be removed, is needed to both increase both broadband deployment and subscribership ... removing critical regulatory tools without guarantees of consumer benefit, and without regard to consumer injury, is not the direction that the Commission should recommend to the Legislature.”⁹

The Commenters again thank Commissioner Brown for his Alternate Decision. It fulfills the legislative mandate for both a report and a plan for advanced services in California. We urge the full Commission to accept this Alternate Decision with our recommended changes.

Dated: May 2, 2005

Respectfully submitted,

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⁹ Comments of the Office of Ratepayers Advocates on Commissioner Brown’s Alternate Decision, April 28, 2005.P. 5.