

**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

**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 Commissioner Brown’s Alternate Decision and commend the Commissioner for drafting a strong Decision that will go a long way toward increasing broadband deployment and use. The Commenters support the Alternate Decision and, to further achieve the goals laid out in the Commission report, suggest additional issues the Alternate Decision should include. In these Opening Comments, Commenters address the following three areas: 1) California’s need for a comprehensive state policy and plan that include steps to promote competition; 2) necessary steps to ensure that the populations identified as vulnerable and at risk no longer remain so; and 3) how to streamline and harmonize state regulations. In addition, it is imperative to redefine Universal Service and secure funding for the long-term, as well as provide Blue Ribbon task force input to the Commission.

I. CALIFORNIA’S NEED FOR A COMPREHENSIVE STATE POLICY AND PLAN.

A. Broadband as a State Priority.

Commissioner Brown’s Alternate Decision identified a number of barriers to both the deployment and use of broadband and proposed responsive recommendations. The Alternate Decision provides a sustained discussion of current statewide policies that support the development of broadband and Universal Service programs.

The Commenters agree with the Alternate Decision that broadband deployment and affordable availability are statewide priorities. Section 709(b) establishes that it is state policy to encourage the development of new technologies and the equitable provision of services. Senate Bill 1563 among other things requires the Commission to develop a plan for encouraging the widespread availability and use of advanced communications infrastructure.

B. The Plan and Policy Should be Comprehensive.

The Commenters would like to commend Commissioner Brown for developing an Alternate Decision that is responsive to the legislative mandate for the California Public Utilities Commission (“CPUC”) to develop a comprehensive plan. A comprehensive plan would include the consideration of the immediate and long-term utility of all advanced network platforms to further the state's goal of *ubiquitous and equitable* broadband deployment. While the Alternate Decision notes California leadership in terms of the number of subscribers, it also acknowledges the shortcomings of Federal Communications Commission (“FCC”) data that is based on zip codes. Finally it notes limited or no choice for some Californians.

We continue to believe that a comprehensive plan would establish policy based on the factual findings derived from a survey and methodology that identified where, to what extent, and to whom broadband has actually been deployed. In addition, the methodology would be used to gather reliable data on actual broadband usage throughout the state. The plan would provide for periodic (annual or biannual) reassessments of the statewide progress regarding deployment and usage and a published accounting to the Legislature, the governor and the people of California. The Alternate Decision supports this view and identifies pending legislation which would mandate broadband mapping in California (SB 580, Escutia).

In the absence of such comprehensive broadband data, it is useful to consider data collected by the Bureau of the Census on computer ownership, Internet use, and broadband use. Portions of the data gathered by the Bureau of the Census have been reported in the *Falling through the Net* and *A Nation Online* series.¹ A sophisticated analysis of this data by the Center

¹ See National Telecommunications and Information, *Falling Through the Net: A Survey of the “Have-Nots”* in Rural and Urban America, (Washington DC,: NTIA, 1995), NTIA, *Falling Through the Net II: New Data on the Digital Divide*, (Washington D.C.: NTIA, 1998), NTIA, *Falling Through the Net: Defining the Digital Divide*, (Washington D.C.: NTIA, 1999), NTIA, *Falling Through The Net: Toward Digital Inclusion, A Report On*

for Community, Tolerance, and Justice shows a continuing and persistent “digital divide” among specific ethnic groups. Given California’s demographic profile, this analysis is critical to consider. The analysis found that:

- The “digital divide” is large and does not appear to be disappearing soon. Blacks and Latinos are much less likely to have access to home computers than are white, non-Latinos (42.0 and 41.8 percent compared to 66.3 percent). They are also less likely to use the Internet at home (27.1 and 22.7 percent compared to 50.0 percent).
- Among Latino groups, Mexicans have the lowest home computer and Internet use rates followed by Cubans who have the next lowest rates. Although Puerto Ricans, Central and South Americans, and other Latinos have higher rates, all Latino groups are substantially less likely to own a computer or use the Internet at home than are white, non-Latinos.
- Less than one half of all black and Latino school-age children have access to a home computer and approximately 1 out of 4 use the Internet at home (compared to 83.6 and 55.2 percent of white, non-Latino children). Ethnic and racial disparities in home computer and Internet use rates are larger for children than for adults.²

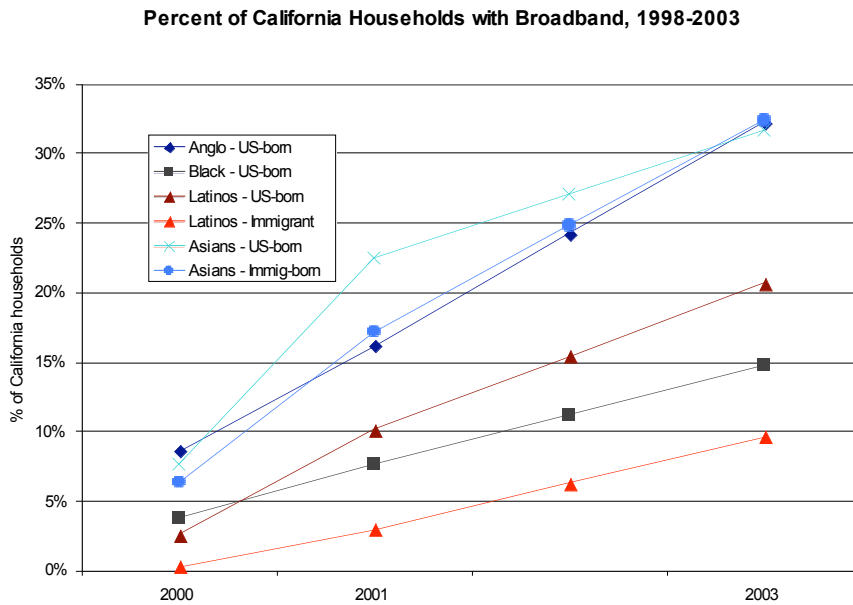
According to a recent analysis of data generated by economists from the Center for Justice, Tolerance and Community, there is a significant disparity among ethnic, racial groups,

Americans’ Access To Technology Tools (Washington, D.C.: NTIA, 2000), and *The A Nation Online: How Americans Are Expanding Their Use of the Internet*, (Washington D.C. NTIA, 2002). United States Department of Commerce. Economics and Statistics Administration and National Telecommunications and Information Administration. *A Nation Online: Entering the Broadband Age*. September 2004. See also *Latinos, Computers and the Internet: How Congress and the Current Administration’s Framing of the Digital Divide has Negatively Impacted Policy Initiatives Established to Close the Significant Technology Gap that Remains*. (San Francisco, Latino Issues Forum, 2004).

² Robert Fairlie, *Is There a Digital Divide? Ethnic and Racial Differences in Access to Technology and Possible Explanations*, Final Report to the University of California, Latino Policy Institute and California Policy Research Center, Department of Economic, University of California, Santa Cruz, November 2003.

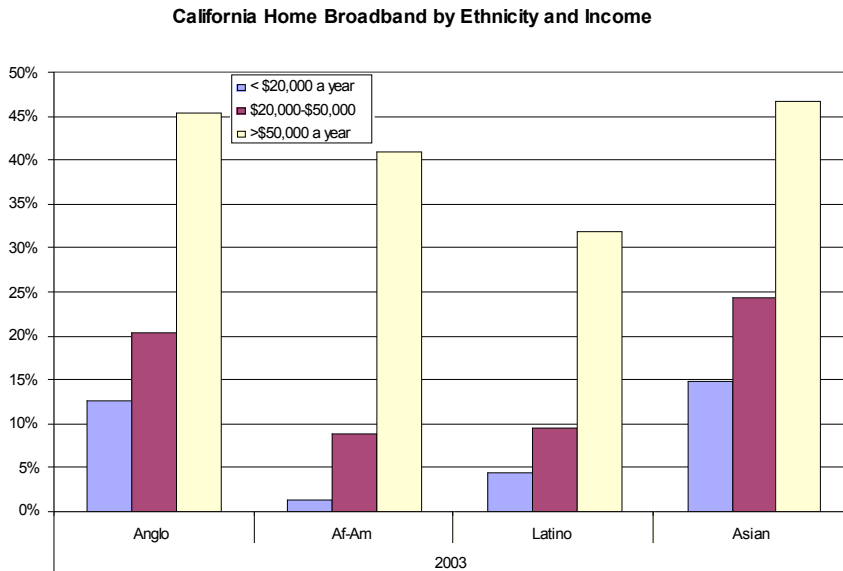
immigrant communities, and low-income communities with regards to broadband access.³ As Chart One below shows, blacks and Latinos (both immigrant and U.S. born) lag furthest behind in broadband access. Chart Two below also points out that the gap is most pronounced at the lower income levels. We urge Commissioner Brown to include this data, which was included in *en banc* presentations by Latino Issues Forum and the California Community Technology Foundation and others and is part of the record of this proceeding, into his Alternate Decision.

Chart One



³ Rob Fairlie Rebecca London, Manuel Pastor, and Rachel Rosner, “A Nation Offline? Research on the Digital Divide,” Center for Justice, Tolerance, and Community, University of Santa Cruz, 2005. Basic statistics from Current Population Survey Internet and Computer Use Supplements, various years, as analyzed by CJTC.

Chart Two



The chapter, “A Plan to Facilitate Proper Functioning of the Market” of the broadband report, is a major contribution to the 1563 proceeding. It begins by acknowledging existing policy areas mandated by the California Legislature inscribed in Public Utilities Code Section 709. These include:

- To promote lower prices, broader consumer choice, and avoidance of anticompetitive conduct.
- To remove the barriers to open and competitive markets and promote fair product and price competition in a way that encourages greater efficiency, lower prices, and more consumer choice.
- To encourage fair treatment of consumers through provision of sufficient information for making informed choices, establishment of reasonable service quality standards, and establishment of processes for equitable resolution of billing and service problems.

These remain important public policy objectives that are not addressed sufficiently in the Final Draft Decision. While some have called for the elimination of broadband regulation, we applaud the approach taken by the Alternate Decision “to end the trend of cramming new technologies and services into old regulatory frameworks and replace the frameworks with a system that makes sense.” We support his new regulatory plan.

Finally, the chapter on regulations and policies that promote consumer protection and service quality is a welcome and necessary addition to the SB 1563 proceeding. For example, 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. The FCC has made clear that it envisions a continued and robust consumer protection role for states.

Likewise, the Alternate Decision recognizes a collaborative relationship not only with the federal government and states, but with the counties, cities and towns that are the franchising authorities for cable television, and the issuers of right of way and zoning permits for telecommunications, cable and wireless in California. It recognizes the indispensable roles of providers and innovators, as well as users, consumers, community-based organizations, and schools and libraries, in ensuring equitable timely deployment to and affordable access and usage of broadband networks and services. It recognizes that even if the federal government should

preempt certain aspects of the regulation of broadband and IP enabled networks, the preemption may be no broader than is necessary. The Alternate Decision recognizes that the state's jurisdiction will retain a regulatory role, and it begins to establish the mechanisms through which and the parameters in which the jurisdiction will act.

Finally, a comprehensive plan would acknowledge, anticipate and establish a timeline for the inclusion of broadband access in the definition of basic service. In addition, the policy would encompass a mechanism for revising the state's Universal Service programs based upon anticipated actions by the federal government and the state with regard to regulation of broadband and/or IP enabled networks.

C. Broadband Task Force

The Commenters continue to believe the creation of a Broadband Task Force is an excellent idea for a Commission responsible for the regulation of energy and water as well as telecommunications. The Commenters agree with Comments filed by the Community Technology Foundation of California (CTFC) and the Disability Rights Advocates (DRA) and others that the Task Force should be comprised of a diverse set of representatives from the underserved communities. Their recommendation and that of the CPUC follow a similar one that the Commenters made in their June 10, 2003 Comments *that the Commission create a Blue-Ribbon Task Force, not to exceed more than ten individuals, consisting of telecommunications industry representatives, telecommunications policy experts, educators, health care representatives, business owners, and representatives from consumer groups, community-based organizations, and community technology programs.* A representative task force composed of state stakeholders could engage in a single-minded focus, an ongoing dialogue and fact finding that the CPUC could find extremely useful. However, for this Task Force to be effective the

Commenters agree with DRA about compensating members or their organizations and providing full accessibility and accommodations for persons with disabilities. Further, the existence of a Task Force on the various issues surrounding broadband deployment should not provide the occasion for future CPUCs to delegate to the Task Force issues that the CPUC by statute must resolve. Nor should the Task Force be required to expend significant effort merely to see its proposals ignored by the CPUC or the state. We strongly recommend that Commissioner Brown include a Broadband Task Force in his Alternate Decision.

II. The Commission Should Take the Necessary Steps to Ensure that the Populations Identified as Vulnerable and at Risk Do Not Longer Remain So.

There is an underserved population in California that does not have access to the Internet.

Some relevant points are:

- Research details a persistent gap in computer ownership, and Internet access especially among African Americans, Latinos, and the disabled.
- There exists a significant disparity among ethnic, racial groups, immigrant communities, disabled and low-income communities with regards to broadband access. Blacks and Latinos (both immigrant and U.S. born) lag furthest behind in broadband access.
- Broadband is not available to thousands of rural residents, businesses and service organizations.
- Broadband is not affordable to underserved populations in California.
- Broadband is not accessible to the disabled community and linguistic minority communities in California.

We agree with the Alternate Decision that “[g]iven the clarity of state policy with regard to universal and ubiquitous access to advanced data technologies, the state needs to take further action to ensure that all residents, businesses, and organizations have access to high-quality,

competitive data services.” The disparities we have described show that the state’s Universal Service programs are more important today than when they were established. The Commenters recommend Commissioner Brown further elaborate support for the following actions to ensure that the populations identified as vulnerable and at risk, no longer remain so. There are four avenues the Alternate and report should support, detailed in the following sections.

A. The CPUC Should Adopt, Implement and Rely Upon a Methodology for Determining Broadband Deployment that Is More Robust and Accurate than that of the FCC.

The Commenters reiterate that the CPUC should not rely on the FCC’s zip code data given its publicly admitted inability to accurately reflect broadband deployment in communities constituting a major portion of the state. As §709 of the Public Utilities Code makes clear, it is the policy for telecommunications in California “[t]o encourage the development and deployment of new technologies and the equitable provision of services in a way which efficiently meets consumer need and encourages the ubiquitous availability of a wide choice of state-of-the-art services.”

The California Legislature has foreseen and recognized that advanced services must be universally available so that all Californians and all communities throughout California can benefit and be part of the information economy. In accordance with the Legislature’s direction, the CPUC should take the necessary steps to ensure that the populations identified as vulnerable and at risk, no longer remain so. In order to accomplish this policy, the CPUC should adopt, implement and rely upon a methodology for determining broadband deployment that is more robust and more accurate than that of the FCC.

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B. The CPUC Should Implement an Ongoing Assessment of Broadband Deployment and Usage.

Our current lack of knowledge about the potential usage preferences of the affected communities of interest requires that the CPUC implement an ongoing assessment of broadband deployment and usage throughout the state. Such an ongoing assessment is far more likely to yield useful information for policy implementation. The Commenters recommend that the Alternate Decision support SB 850's mandate regarding a mapping of broadband in the State of California.

C. Review, Refocus, and Strengthen Universal Service Programs.

In its Universal Services proceeding, R.95-01-020 and I.95-01-021, the CPUC established the criteria it would use to evaluate whether service elements should be added or deleted from the group of basic telecommunications services in order to determine when a change in the definition of Universal Service was warranted.⁴ In the proceeding, the CPUC stated: "In evaluating whether service elements should be added to or deleted from basic service the Commission will consider the following criteria:

- a. the service is essential for participation in society;
- b. a substantial majority, 65%, of residential customers subscribes to the service. Assess the following:
 - (1) availability of the service;
 - (2) the degree to which the service has been promoted by the carrier;

⁴ Rulemaking on the Commission's Own Motion into Universal Service and to Comply with the Mandates of Assembly Bill 3643; Investigation on the Commission's Own Motion into Universal Service and to Comply with the Mandates of Assembly Bill 3643; Decision No. 96-10-066, Rulemaking No. 95-01-020 (Filed January 24, 1995), Investigation No. 95-01-021 (Filed January 24, 1995), 68 CPUC2d 524 (1996).

- (3) the level of customer education that has been provided for the service;
 - (4) the communities that are presently being targeted for marketing and use of the service.
- c. the qualitative and quantitative benefits of adding the service outweigh the costs;
 - d. availability of the service, or the number of subscribers would not increase without intervention.”⁵

While Commenters question the continued viability of some of the criteria and would propose that some of them be changed, the advent of broadband and the widespread usage of dial-up services certainly provide the occasion for a reassessment of the definition of Universal Service. The reassessment is all the more advisable given the scope of inquiry that the Legislature mandated that the CPUC initiate pursuant to SB 1563. Moreover, given the requirements of SB 1563, the CPUC should not wait for a petitioner to initiate the inquiry, but should act on its own. Such a reassessment is a key component of any credible state broadband plan and resulting policy. We disagree with the method articulated in the Alternate Decision for estimating the cost of including broadband as a basic service. We feel that the estimate is exaggerated. A targeted plan could be built on the recommendations in Chapter Three of the Alternate Decision that calls for building networks using public/private partnerships and building networks with subsidized state funds and private partnerships would surely lower these estimates. A modest step might be to allow the current telecommunication discounts to be applied to broadband.

⁵ Rulemaking on the Commission's Own Motion into Universal Service and to Comply with the Mandates of Assembly Bill 3643; Investigation on the Commission's Own Motion into Universal Service and to Comply with the Mandates of Assembly Bill 3643; Decision No. 96-10-066, Rulemaking No. 95-01-020 (Filed January 24, 1995), Investigation No. 95-01-021 (Filed January 24, 1995), 68 CPUC2d 524 (1996).

Commenters also recognize that the CPUC has not asserted jurisdiction over a number of the broadband providers, and that the federal government may preempt state regulation of broadband to some degree. Nevertheless, the CPUC should initiate the inquiry on its own motion as part of this report's outcomes. And, the CPUC should work in concert with the governmental entities possessing jurisdiction over the other broadband providers in order to establish an appropriately comprehensive inquiry.

We agree with most filers, such as the CTFC, MCI, TURN, etc., 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 how best to use the funds to address the current disparities in broadband availability, affordability, accessibility, and use. We recommend that Commissioner Brown include such an immediate review in the Alternate Decision. The review should also include funding mechanisms as erosion of land-line jeopardizes Universal Service overall.

D. New Technologies Need to be Reviewed in Terms of the State's Universal Service Principles.

The Commenters are disappointed that the Commission recently voted to not challenge the FCC Vonage decision without first concluding its own proceeding on VoIP. We recommend that Commissioner Brown include ideas on how the CPUC can take a leadership in working with the FCC to address the adverse impact of VoIP on State Universal Service Fund revenues, and

advocate the VoIP providers be required to provide access to the disabled, contribute to the Universal Service Fund⁶, and provide emergency 911 services. Moreover,

“[w]hile reform of the telecommunications universal service policy is clearly warranted, ignoring the impact of IP-enabled intermodal competition is counterproductive. In an era of IP-enabled convergence, ultimately, proposals and policies that solely focus on one technology platform will be less successful. Too often they will serve as an opportunity for regulatory arbitrage by firms seeking an advantage through exemption. The advent of IP-enabled broadband telecommunications, cable, and wireless platforms offering bundled voice, video, and data services provides a critical opportunity to harmonize a fundamental public interest goal across platforms.”⁷

For these reasons, the impact of IP enabled networks and technologies must be reviewed in terms of their impact on the provision of Universal Service.

III. STREAMLINING AND HARMONIZATION OF STATE REGULATIONS.

The Commenters support the proposed recommendations in the Alternate Decision concerning rights of way and CEQA with the exception of the following one.

A. Harmonization of §53066 Cable Franchising and the 47 USC §653 and CFR 76.1500-1505.

The Commenters remain concerned that the both the Draft Final Decision and the Alternate Decision’s proposed policy with regard to the Open Video System will encourage electronic redlining. Under both the Draft Final Decision and the Alternate Decision, areas that providers deem to be less lucrative will not be retrofitted for video at the same time as areas deemed to be more lucrative. Further, in response to competitive pressures, the cable operator and the telephone entrant may offer significant discounts and service options to desired

⁶ According to recent statements by VoIP could drain California's universal service coffers of \$400 million in 2008 as it grabs 43% of the state's voice business, predicted the staff of the Cal. PUC. The High Cost Funds A & B used to promote service in high-cost areas through subsidies to SBC, Verizon and 17 small companies are expected to lose 114-253 million. The Universal Lifeline Fund, providing subsidies to low- income users, is projected to lose \$48-\$107 million, the Deaf & Disabled Communications Fund \$13-\$30 million and the California Teleconnect Fund for school, library and rural medical and community-based organizations \$8-\$17 million. Cal. PUC Staff Warns VoIP Could Take 400m From Cal. Universal Service In 2008, *State Telephone Regulation Report*, July 30, 2004.

⁷ Allen Hammond, Universal Service: Problems, Solutions, and Responsive Policies, *Federal Communications Law Journal* (2005).

customers. These discounts and options are not likely to be made available to residents or businesses in the less desired areas.

Given current federal law, the franchising authority would be powerless to effectively challenge the video program packaging and pricing decisions of the cable operator and the CPUC would not be able to challenge the pricing of a non-telecommunications [video] service supplied by the telephone company. The net effect is likely to be the continuation of regulatory arbitrage and a schizophrenic regulatory policy that encourages service of lucrative areas and markets to the exclusion of other areas.

B. Technology and Marketplace Solutions and Policy.

The convergence of IP, cable, wireline and wireless technologies has created an explosion in broadband options, increased competition and spurred greater deployment at cheaper prices. Nevertheless, all the technology and market innovations have yet to solve the rural availability and access conundrum or assure that inner cities and tribal areas, have access available to them.

It is the area of policy, working in concert with firms riding the wave of innovation and responding to the demands of competition, that has successfully pushed deployment into rural areas and ensured access to inner cities through public private partnerships, CBOs, schools, libraries and rural health providers.

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CONCLUSION

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: April 28, 2005

Respectfully submitted,

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/s/

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