

**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 BY THE CALIFORNIA COMMUNITY
TECHNOLOGY POLICY GROUP, THE BROADBAND INSTITUTE
OF CALIFORNIA, AND LATINO ISSUES FORUM**

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The Commenters have reviewed the opening comments and address the following three areas in these reply comments: 1) California's need for a state comprehensive policy and plan, 2) The Commission should take the necessary steps to ensure that the populations identified as vulnerable and at risk, no longer remain so, and 3) Streamlining and harmonization of state regulations: monitor, streamline harmonize, but do not exempt

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

A. Broadband as a State Priority

The California Public Utilities Commission (CPUC) identified a number of barriers and proposed a number of responsive recommendations. Among the recommendations was the suggestion that broadband deployment be made a statewide priority. The Commenters reiterate broadband deployment and affordable availability is a statewide priority. Section 709 (b) establishes that it is state policy to encourage the development and the deployment 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. The basic thrust of policy is clear.

B. The Plan and Policy Should be Comprehensive

The Commenters respectfully encourage the CPUC to 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. The CPUC has begun that process by identifying all of the current and potential broadband network platform providers. However, as noted in our initial comments, and many others' opening comments, some of the platforms are either not yet operating (Broadband Over Powerline) or not a feasible option (satellite) in the California market and the barriers of underserved communities has not been fully considered.

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 and to whom. 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.

A comprehensive plan would include a collaborative relationship not only with the federal government and other 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 would recognize the indispensable roles of providers and innovators, as well as users, consumers, community-based organizations, schools and libraries, in ensuring equitable timely deployment to and affordable access and usage of broadband networks and services. It would recognize 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 and hence the jurisdictions of this state are likely to retain a regulatory role. The plan, in anticipation that the state's jurisdictions will retain a regulatory role, should establish the mechanisms through which and the parameters in which the jurisdictions 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 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 opening 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 of 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.

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

As noted in our opening comments 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. Latinos and African Americans 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 the linguistic minority community in California

The legislature has affirmed the principle of universal service to underserved Californians and provided legislative support for the state's universal service programs. The disparities we have described show that the state's universal service programs are more important today than when they were established. The Commenters urge the CPUC to take the necessary steps to ensure that the populations identified as vulnerable and at risk, no longer remain so. There are five avenues the report should support:

A. The CPUC Must 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 must adopt, implement and rely upon a methodology for determining broadband deployment that is more robust and more accurate than that of the FCC.

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

In its comments, ORA speculates that there may be many reasons why low income households and individuals or those with a primary language other than English, or those without sufficient computer skills, might not view broadband as a viable service option at present. While ORA’s surmises might appear reasonable on the surface, they are, in the final analysis, reasons offered by ORA and not by the affected communities of interest. And, an unexamined reliance on ORA’s proffered rationales for non usage by the affected communities of interest might lead to the potentially patronizing and discriminatory conclusion that such communities need not be served.

ORA sites no study, no data, no survey upon which it bases its speculations. The Commenters assert that the more appropriate response is that *we do not know what the respective communities of interest would prefer because the technology most likely has not been made available to them and no one has asked them what they would prefer*. Low income and minority consumption of cable television services as well as the consumption of broadband internet services through CBOs, libraries and schools refute ORA’s reasoning. It is precisely because of our current lack of knowledge about the potential usage preferences of the affected communities of interest that the CPUC’s implementation of an ongoing assessment of broadband

deployment and usage throughout the state is so important. Such an ongoing assessment is a far more likely to yield useful information for policy implementation.

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.¹ 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;
 - (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.”²

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 SB1563. Moreover, given the requirements of SB

¹ 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).

² 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).

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.

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 actions. 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.

D. DSL and the California Teleconnect Program.

The Commenters support the recommendations on assisting underserved (lower use" communities but urge the Commission to enforce the legislative position and Commission's ruling on DSL as a discounted eligible service and to establish a an outreach program for the California Teleconnect Program. Libraries and community-based organizations with community technology centers should be to become part of the CENIC's CalREN network, which already reaches into all 58 counties. Public networks like CENIC and the Northern Sierra Rural Health Network (NSRHN) should receive public support for the last mile connection.

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

The Commenters agree that VoIP and other new technologies should be free from *unnecessary* regulation but urge the Commission to address VoIP through its open proceeding 10402007. The CPUC has sought to assert jurisdiction over VoIP.³ And, it is our understanding that California, along with New York, Ohio, and Minnesota are appealing the FCC's Vonage

³ California Joins VoIP Regulation Party, Broadband Business Report, October 7, 2003, Vol. 13, No. 20.

decision. Given the CPUC's publicly stated concerns regarding the adverse impact of VoIP on universal service fund revenues, the Commenters are particularly concerned about whether VoIP providers will be required to provide access to the disabled, contribute to the Universal Service Fund⁴, 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.”⁵

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: MONITOR, STREAMLINE HARMONIZE, BUT DO NOT EXEMPT

A. Proposed Exemptions From §851 and CEQA

The CPUC proposes that the state can reduce the regulatory burden on broadband providers by exempting broadband deployment projects from CPUC approval either via legislation or by CPUC ruling. And, by exempting broadband projects that don't require change in functionality of a utility's existing infrastructure.

The Commenters reiterate their question of whether there is in fact a need for exemptions to §851 and CEQA if both processes are streamlined and efficiently implemented. An exemption presupposes that there will never be circumstances in which a certification might not be proper. Absent a more substantial record supporting the conclusion that section 851 and

⁴ 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.

⁵ Allen Hammond, Universal Service: Problems, Solutions, and Responsive Policies, __Federal Communications Law Journal __ (2005).

CEQA certifications are in fact no longer necessary and no longer serve a legitimate regulatory function, streamlining seems the more prudent course.

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

The Commenters remain concerned that the adoption of the CPUC's proposal would result in a piecemeal approach to the resolution of a growing regulatory conflict between the two major broadband competitors and the regulatory environments in which they currently make their homes. What is needed is state and federal recognition that intermodal competition requires a consistently *equitable regulatory environment regardless of platform*. And that consistency cannot responsibly be achieved through regulatory opportunism or abdication but through thoughtful, frugal, circumspect regulatory engagement.

The Commenters also are concerned that the CPUC's proposed policy will encourage electronic redlining. Under the CPUC's proposal, 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 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 and markets necessary for inclusion if there is to be the desired widespread deployment.

While companies should not be discouraged in their efforts to provide bundled service offerings, the CPUC must provide constructive encouragement to companies to engage in equitable deployment of infrastructure and services. Tying regulatory forbearance to equitable deployment and service commitments may be one strategy to accomplish these seemingly conflicting goals.

C. Technology and Marketplace Solutions and Policy.

The CPUC cites technological innovation as one of the key drivers for greater deployment. Certainly, increases in bandwidth and capacity and corresponding decreases in equipment costs have made deployment cheaper. Similarly, 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, even when passed 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 have successfully pushed deployment into rural areas and assured access to inner cities through public private partnerships, CBOs, schools, libraries and rural health providers.

CONCLUSION

The Commenters again thanks the Commission for it many efforts on the Report. Important issues have been raised at the Full Panel Meeting, through the opening comments, and now in the Reply Comments. We respectfully request that the Commission take the time to reflect on the issues raised at the Full Panel Meeting and in the Comments and revise the Report before submitting it to the legislature.

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