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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Conduct a
Comprehensive Examination of the
California Teleconnect Fund.

Rulemaking 13-01-010

**PHASE 3 DECISION ADOPTING RULES AND REQUIREMENTS FOR
COMMUNITY-BASED ORGANIZATION PARTICIPANTS**

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PHASE 3 DECISION ADOPTING RULES AND REQUIREMENTS FOR COMMUNITY-BASED ORGANIZATION PARTICIPANTS

Summary

This decision addresses implementation issues and documentation requirements for the three-year eligibility verification process adopted in Decision 15-07-007 for community-based organizations (CBOs) participating in the California Teleconnect Fund (CTF) program. This decision finds that in light of the fact that CBOs must meet various CTF eligibility requirements with respect to their services, it is unnecessary to adopt an “administration factor” to reduce CTF support assumed to apply to administrative uses. This decision also declines to adopt a budget cap for the health care/health services CBO category and instead retains the \$50 million revenue cap currently applied to these entities. This proceeding remains open.

1. Background

On January 24, 2013, the Commission opened this rulemaking to undertake a comprehensive examination of the California Teleconnect Fund (CTF) program. On November 5, 2013, the assigned Commissioner issued a Scoping Memo and Ruling dividing the proceeding into three phases: Phase 1 (Restatement of Goals), Phase 2 (Program Design), and Phase 3 (Program Implementation and Administration). On July 23, 2015, the Commission adopted Decision (D.) 15-07-007, which resolved the Phase 1 and Phase 2 issues by adopting restated program goals and a number of program design reform measures.

On November 17, 2015, the Commission held a prehearing conference to address Phase 3 issues. On December 18, 2015, the assigned Commissioner issued an Amended Scoping Memo and Ruling for Phase 3 of the Proceeding

(Amended Scoping Memo). The Amended Scoping Memo set forth 11 issues to be considered during Phase 3. The Scoping Memo stated that the Commission would address Issues 1 and 2 in an earlier decision in spring of 2016 while Issues 3 through 11 would be addressed in a later decision.

On April 21, 2016, the Commission adopted D.16-04-021, which resolved Issue 1 concerning a process for eligible entities in unserved or underserved areas to seek exemption from reduced voice services support. The decision also addressed implementation of the new cap for E-rate schools adopted in D.15-07-007. The decision determined that further information needed to be gathered in order to resolve Issue 2 concerning methods to determine whether wireless data plans for non-E-rate participants are the most cost-effective form of internet access.

Parties filed initial comments on Issues 3 through 11 of the First Amended Scoping Memo on April 8, 2016.¹ Parties filed reply comments on Issues 3 through 11 on May 6, 2016.²

On June 2, 2017, the assigned Commissioner issued a Second Amended Scoping Memo and Ruling for Phase 3 of the Proceeding (Second Amended Scoping Memo). The Second Amended Scoping Memo contemplated that a

¹ Initial Comments were filed by: the Office of Ratepayer Advocates (ORA); The Utility Reform Network (TURN); the Corporation for Education Network Initiatives in California (CENIC); the California Community Colleges Chancellor's Office (CCCCO); the California Association of Nonprofits (CalNonprofits); Cox California Telecom, LLC dba Cox Communications (Cox); and Pacific Bell Telephone Company dba AT&T California, AT&T Corp., Teleport Communications America, LLC, Cricket Wireless LLC, and AT&T Mobility LLC (New Cingular Wireless PCS, LLC, AT&T Mobility Wireless Operations Holdings, Inc. and Santa Barbara Cellular Systems Ltd.) (collectively, "AT&T").

² Reply Comments were filed by: ORA, TURN, CENIC, CCCCCO, CalNonprofits, Cox, AT&T, the Center for Accessible Technology (CforAT), and the Califa Group.

proposed decision on the following issues from the Amended Scoping Memo would be issued in Q4 2017:

- Issue 3: The level of a California Telehealth Network (CTN) budget cap and a health care/health services Community-Based Organizations (CBO) budget cap and associated implementation issues.
- Issue 4: How to separate internet access service used for both administrative purposes and to provide clients with direct access to the internet (hybrid use segregation or other separation).
- Issue 5: Implementation and documentation specifics for the adopted three-year eligibility verification requirement.
- Issue 11: Is the Federally Qualified Health Center (FQHC) qualification process sufficiently similar to the CTF requirements that qualification as an FQHC should be sufficient to qualify for CTF.

The Second Amended Scoping Memo invited parties to file additional comments on Issues 3 and 11. It also determined that the scope of Phase 3 should be amended to consider whether modifications to D.15-07-007 should be made to:

- (1) make changes to the definition of a health care/health services CBO;
- (2) remove the requirement that a budget cap be set for health care/health services CBOs; and/or
- (3) impose a revenue cap per health care/health services CBO.

Comments on the Second Amended Scoping Memo were filed on June 20, 2017 by AT&T and Sprint Communications Company LP (Sprint). Reply Comments were filed on June 30, 2017 jointly by TURN and CforAT, and by the California Association of Competitive Telecommunications Companies (CALTEL).

2. Discussion

2.1. Documentation and Implementation Practices for CBO Recertification Process

D.15-07-007 adopted new eligibility criteria for CBOs and required CBOs to re-verify their CTF program eligibility every three years.³ The Commission ordered that the implementation and documentation specifics for the three-year eligibility verification requirement be considered in Phase 3 of this proceeding.

2.1.1. Documentation of Qualifying Services and Direct Access

The stated goals of the CTF program include advancing universal service, bringing every Californian direct access to advanced communications services in their local communities, ensuring high-speed internet connectivity for community CTF-eligible institutions at reasonable rates, and increasing direct access to high-speed internet in communities with lower rates of internet adoption and greater financial need.⁴ D.15-07-007 adopted additional CBO eligibility criteria to advance these CTF goals, including the following:⁵

- Qualifying Services⁶ must be 50% or more of a CBO's mission.
- CBO must provide its community access to the internet - except for health care/health services or 2-1-1 CBOs.
- CBO must provide service directly to individuals at specific geographic locations.

³ D.15-07-007, Appendix A at 2-3 and 7.

⁴ *Id.*, Appendix A at 1.

⁵ *Id.*, Appendix A at 2-3.

⁶ The following services are "qualifying services": health care, job training, job placement, 2-1-1 referral (as authorized by Commission Resolution) and information services, educational instruction, or a community technology program providing access to and training in the internet and other technologies. (D.15-07-007 at 64-65.)

- CBO must provide services directly or through some closely related indirect assistance. “Indirect Assistance” means providing assistance on site to those unable to do so because of disability or limited English proficiency.
- Internet access for purely administrative purposes continues to be prohibited.

TURN, CforAT, CalNonprofits, and AT&T all favor a simple application and recertification process for CBOs. TURN argues that requiring CBOs to spend time and money on a complex recertification process detracts from meeting service needs. TURN proposes a simple process and form developed by the Commission wherein an entity seeking to reapply for CTF status attests to the fact that they meet the various eligibility requirements.⁷ TURN proposes that Commission staff engage in periodic audits to assess if the requirements are being met.⁸ CforAT supports TURN’s proposed process.⁹

CalNonprofits recommends that the determination as to whether the 50% mission threshold has been met should be based on review of a CBO’s mission statement and Part III of Internal Revenue Service (IRS) Form 990, which requires the organization to list programmatic achievements.¹⁰ For organizations with gross receipts of \$50,000 or less that file an IRS Form 990-N postcard, CalNonprofits argues that the mission statement should be sufficient evidence of compliance because the Form 990-N postcard does not require a Statement of Program Service.¹¹

⁷ TURN April 8, 2016 Comments at 4.

⁸ *Ibid.*

⁹ CforAT May 6, 2016 Reply Comments at 3.

¹⁰ CalNonprofits April 8, 2016 Comments at 2.

¹¹ *Id.* at fn. 2.

ORA argues that a CBO's mission statement is difficult to verify without additional information or documentation.¹² ORA also argues that the Commission should adopt requirements to verify that a CBO provides its community access to the internet, if that CBO's primary mission is not health care, health services, or 2-1-1 referral services. ORA proposes that the Commission assess this eligibility criterion by: (1) verifying the hours per week that people are able to directly or indirectly use CTF-supported advanced communications services; (2) verifying the users of the CTF-supported service that are not CBO staff; and/or (3) verifying the existence of a separate connection that is used for administrative purposes.¹³

We agree with TURN, CforAT, CalNonprofits, and AT&T that the application and recertification process should not be overly complex or unduly burdensome for CBOs, Commission Staff, and carriers. We also agree with these parties that self-enforcing rules, when feasible, should be adopted. ORA's proposed procedure for verifying users would impose significant additional administrative burdens on CBOs and is unwarranted.

Currently, CBOs are required to attest to all of the information provided in their application and provide the following documentation: mission statement, brochure of the organization, proof of tax-exempt status, and IRS Form 990. CBOs offering healthcare are required to provide additional information. If the information provided in the application is insufficient for Staff to make an eligibility determination or is not corroborated by publicly available information regarding the organization (e.g., information on the CBO's

¹² ORA April 8, 2016 Comments at 12-13; ORA May 6, 2016 Reply Comments at 2-3.

¹³ ORA April 8, 2016 Comments at 13-16.

website), Staff then requests additional information or supporting documentation from the applicant. Staff may also audit participants to ensure continued eligibility.

We find that applicants should continue to self-attest that they meet the eligibility requirements but that a few documentation specifics should still be required. As discussed further below, we continue to require CBOs to provide the following documentation: proof of tax-exempt status and proof of revenues. CBOs should also continue to provide Part III of their most recent IRS Form 990, which requires the organization to list programmatic achievements. CBOs should also provide any additional supporting documentation that demonstrates that they provide eligible services at a specific location. We no longer require submission of a mission statement or brochure, however, CBOs may still submit this documentation if it supports their eligibility. Communications Division (CD) Staff may continue to request additional information or supporting documentation for deficient applications, and may continue to audit participants. The procedure we adopt today is similar to the current procedure in place for making CBO eligibility determinations and there is no evidence that it has resulted in widespread abuse.

Based on parties' comments, we find that additional guidance is necessary regarding the requirement that qualifying services must be 50% or more of a CBO's mission. There is a lack of clarity as to how this requirement will be implemented and there must be sufficient guidance so that Staff is able to make the necessary eligibility determination. We agree with ORA that it is difficult to verify that qualifying services are 50% or more of a CBO's mission based solely on review of a CBO's mission statement. In order to verify that at least half of a CBO's purpose coincides with a CTF-qualifying service, ORA proposes that the

CBO submit additional information such as a budget, work-plan, or schedule to disclose its activities and services.¹⁴

We agree with ORA that information regarding the CBO's allocation of its resources to qualifying services should be provided to verify the 50% mission threshold requirement. Information regarding how much of the CBO's employees' hours are spent on qualifying services provides a possible method for quantifying the percentage of a CBO's mission that is devoted to qualifying services. However, additional implementation details must be considered prior to adopting such a requirement. Therefore, Commission Staff is directed to hold a workshop to address the implementation details.

2.1.2. Documentation of Tax-Exempt Status

D.15-07-007 requires CBOs to submit an IRS 501(c)(3) letter as evidence of their tax-exempt status.¹⁵ An IRS 501(d) letter is also accepted under the current CTF rules and we see no reason to exclude this documentation as acceptable proof of tax-exempt status.¹⁶ Therefore, CBOs may continue to provide either an IRS 501(c)(3) or IRS 501(d) letter as evidence of tax-exempt status.

CalNonprofits also recommends that the Commission accept state recognition of tax exempt status as alternate proof.¹⁷ CalNonprofits does not explain why this alternate proof would be necessary. The CTF program has always used the IRS approved federal form letter as proof of tax-exempt status. It is unclear that there would be any eligible entities that would be excluded

¹⁴ ORA April 8, 2016 Comments at 12-13.

¹⁵ D.15-07-007, Appendix A at 2.

¹⁶ D.96-10-066, Appendix B at Rule 8.D.

¹⁷ CalNonprofits April 8, 2016 Comments at 5.

from CTF as a result of the requirement that the federal forms be provided. Given that there is no demonstrated need for this alternate proof, we will continue to accept only the federal forms for the purposes of administrative efficiency.

2.1.3. Documentation of Revenues

D.15-07-007 requires CBOs to provide an IRS Form 990 or other financial statements and attestation if they do not have a Form 990 or if the Form 990 is inadequate.¹⁸ In order to be eligible for CTF, this financial documentation must demonstrate that each CBO (with the exception of 2-1-1 CBOs and health care/health services CBOs) has annual revenues of less than \$5 million. As discussed below, health care/health services CBOs must demonstrate that they have revenues of less than \$50 million per year.

CalNonprofits recommends that revenues reported on the IRS Form 990 or California Franchise Tax Board (CA FTB) Form 199 should be used to determine eligibility under the revenue cap.¹⁹ Pursuant to D.15-07-007, an entity may submit the CA FTB Form 199 if it does not have a Form 990 or if the Form 990 is inadequate.²⁰

2.1.4. Documentation Regarding Board of Directors

D.15-07-007 adopted the CBO eligibility criterion that a majority of members of the Board of Directors are members of the community the CBO serves.²¹ CalNonprofits proposes that the Commission adopt an expansive

¹⁸ D.15-07-007, Appendix A at 2.

¹⁹ CalNonprofits April 8, 2016 Comments at 4.

²⁰ D.15-07-007, Appendix A at 2.

²¹ *Ibid.*

interpretation of this requirement and that the definition of “community” should include persons impacted, affected, and/or interested in the services provided by the CBO.²²

By definition, CBOs are community-based and are required to offer services within a local geographic area in California.²³ The intent of the board member requirement is to verify that a majority of the Board of Directors reside within and represent the community, rather than residing outside of the state. Therefore, this requirement is met if the CBO demonstrates that a majority of the board members reside within the state. Because a CBO may also serve a community of interest (such as the disability community) rather than a geographic community, this requirement is also met if the CBO demonstrates that a majority of its board members are members of the community of interest being served.

2.1.5. Documentation Regarding Charges and Fees

D.15-07-007 defines a CBO as a “small, nongovernmental, California nonprofit corporation which itself directly serves individuals and families and which offers services to anyone who needs it without charge or at a minimal fee.”²⁴ ORA suggests that the Commission consider requiring documentation that a CBO does not charge clients or only charges a minimal fee.²⁵ ORA states that additional information from CBOs may be required to establish thresholds for what constitutes a minimal fee.

²² CalNonprofits April 8, 2016 Comments at 6-7.

²³ D.15-07-007 at 25.

²⁴ *Id.* at 25.

²⁵ ORA April 8, 2016 Comments at 16.

Based on the adopted definition of a CBO, we agree that CBOs should provide information regarding charges for their services. There is a lack of information as to what would constitute a minimal fee. What constitutes a reasonable minimal fee may vary by type of CBO. Rather than establish thresholds as to what would constitute a minimal fee for each type of CBO, we find that a CBO's offering of services with a fee structure that includes discounted or subsidized rates (e.g., a sliding scale fee based on income and capacity to pay) would sufficiently demonstrate that, consistent with CTF goals, the CBO serves communities with greater financial need.²⁶ Therefore, CBO applications should include information regarding the fees, if any, that the CBO charges for its services, including whether services are offered at a discounted or subsidized rate.

2.1.6. Clarification Regarding Eligibility of Pre-Schools

ORA requests that the Commission clarify whether an organization offering pre-school curriculum should apply to the CTF program as a school or CBO.²⁷ Pursuant to D.15-07-007, depending on the characteristics of the pre-school, a private, non-profit pre-school could potentially qualify under either the school category or the CBO category. Pre-schools that meet the E-rate eligibility criteria may qualify under the schools category.²⁸ Religious organizations offering pre-school curriculum may only qualify under the schools

²⁶ Additional forms of acceptable payment for health care/health services CBOs are discussed below in Section 2.3.1.

²⁷ ORA April 8, 2016 Comments at 17.

²⁸ D.15-07-007 at 17.

category.²⁹ Other pre-schools that do not meet the criteria under the schools category may apply under the CBO category.³⁰

2.1.7. Appeal of Eligibility Determination

Applicants are currently informally provided with an opportunity to appeal a rejected application. Applicants should continue to have the opportunity to submit an appeal. However, the procedure for an appeal should be formalized. CD Staff is directed to set forth the procedure for appealing a CTF eligibility determination through a Commission resolution.

2.1.8. Web-Based Administration

ORA recommends that the administration of the CTF program be web-based and that the Commission develop an online portal to facilitate the application process.³¹ We agree that, to the extent feasible, administration of the CTF program should be web-based and allow for the electronic submission and receipt of documents through means such as an online portal or via e-mail. CD Staff shall explore and implement feasible options for making CTF program administration web-based.

2.2. Hybrid Use Segregation

In D.15-07-007, the Commission maintained the rule disqualifying CBOs from CTF if they used internet access services purely for administrative purposes.³² The Commission stated that “there is a practical issue of how to separate an internet access service that is used for both administrative purposes

²⁹ *Id.* at 24.

³⁰ *Ibid.*

³¹ ORA April 8, 2016 Comments at 11.

³² D.15-07-007 at 30-31.

and to provide clients with direct access to the internet.”³³ Therefore, the Commission ordered that hybrid use segregation or other separation issues be considered as part of Phase 3 of this proceeding.³⁴

TURN, CalNonprofits, CforAT, and AT&T are all opposed to adopting an assumed “administration factor” to reduce CTF support assumed to apply to administrative uses rather than direct access.³⁵ These parties argue that there is a lack of justification for adoption of an administration factor; that adoption of an administration factor would be unduly burdensome for CBOs, Commission Staff, and service providers; and that the requirement that 50% or more of a CBO’s mission be services that qualify for CTF is sufficient to prevent excessive support for administrative purposes.

ORA argues that the requirement that qualifying services must be 50% or more of a CBO’s mission is not sufficient to limit excessive CTF support for administrative uses because this requirement does not measure the level of direct access provided to clients.³⁶ ORA argues that there would be no need to apply an administration factor if the Commission were to adopt a process that documents the amount of direct access to the internet or advanced communications services provided by the CBO because this process would prevent excessive CTF support of administrative uses by eliminating ineligible CBOs entirely.³⁷ In the alternative, ORA proposes that the Commission adopt an

³³ *Id.* at 31.

³⁴ *Id.* at 74 [Ordering Paragraph 7].

³⁵ TURN April 8, 2016 Comments at 3-4; CalNonprofits April 8, 2016 Comments at 3; CforAT May 6, 2016 Comments at 1-2; AT&T May 6, 2016 Comments at 2-3.

³⁶ ORA April 8, 2016 Comments at 3.

³⁷ *Id.* at 5-6.

administration factor of 20%, which would reduce CBOs' CTF discount from 50% of the purchased service price to 40%.³⁸

In D.15-07-007, the Commission adopted more stringent eligibility criteria for CBOs than had previously been in place in order to ensure that CBO participation advances the goals of the CTF program. Under the criteria adopted in D.15-07-007, CBOs must demonstrate, among other things, that at least 50% of the CBO's mission consists of qualifying services, that it provides services directly to individuals at specific geographic locations, and that it provides its community access to the internet.³⁹

We agree with TURN, CalNonprofits, CforAT, and AT&T that an administration factor would be burdensome to administer and is unnecessary so long as the CBO meets the relevant eligibility criteria regarding their services adopted in D.15-07-007. As noted by CalNonprofits, the Commission has not adopted an administration factor for any other category of CTF participants and there is a lack of justification for singling out the CBO category.⁴⁰ Moreover, as noted by CforAT, the CTF Program has never demanded that 100% of the subsidy be used for direct or indirect access.⁴¹ So long as a CBO meets the necessary qualifications, including those governing qualifying services and the provision of direct access, we are satisfied that providing CTF support to that

³⁸ *Id.* at 9-10.

³⁹ D.15-07-007, Appendix A at 2. Pursuant to D.15-07-007, the requirement that a CBO provide its community access to the internet is separate from the qualifying services requirement. Health care/health services CBOs and 2-1-1 CBOs are not required to provide the community access to the internet.

⁴⁰ CalNonprofits May 6, 2016 Comments at 1.

⁴¹ CforAT May 6, 2016 Comments at 2.

CBO advances the goals of CTF and find it unnecessary to otherwise reduce the CTF support for assumed administrative uses.

2.3. Health Care/Health Services CBOs

2.3.1. Eligibility Requirements

D.15-07-007 adopted a new eligible category of CBOs called health care/health services CBOs. This category is a subcategory of qualifying CBOs and remains separate from the statutory category for hospitals and health clinics. Pursuant to D.15-07-007, with the exception of the requirements that each CBO must have revenues of less than \$5 million and provide its community access to the internet, health care/health services CBOs must meet all of the general CBO eligibility criteria. D.15-07-007 also requires that these entities meet the following additional criteria: (1) the entity must be staffed by licensed medical personnel on site, and (2) the entity must accept Medicare and Medi-Cal or provide services without charge or at a minimal fee.⁴²

As with all other CBOs, health care/health services CBOs are required to demonstrate that qualifying services are at least 50% of the CBO's mission.⁴³ As stated above, Commission Staff is directed to hold a workshop to further address implementation of this requirement. We clarify that the licensed medical personnel that are required to be on site must provide health care services to patients, not just provide administrative services. Qualifying health care services shall include those covered by any Californian medical insurance

⁴² D.15-07-007, Appendix A at Rule 5.

⁴³ A CBO that provides health care services as well as other CTF eligible services would be eligible as a health care/health services CBO if at least 50% of its mission is for qualifying health care services.

or government funded medical plan such as Medi-Cal, Medicare, or the Department of Veterans Affairs insurance.

Consistent with D.15-07-007, the health care/health services CBO should demonstrate that it provides services to underserved, low-income Californians by accepting patients participating in a government funded insurance or program designed to provide health services to low-income, elderly, or disabled Californians, or veterans. D.15-07-007 requires that the entity must accept MediCare and MediCal or provide services without charge or at a minimal fee. As discussed above for CBOs generally, in lieu of determining what constitutes a minimal fee, we find it acceptable if the health care/health services CBO offers services at a discounted or subsidized rate, including on a sliding scale.

2.3.2. Consideration of Budget and Revenue Caps

The Commission determined that a revenue cap per entity should not be imposed on health care/health services CBOs. Instead, the Commission determined that a budget cap should be adopted for the health care/health services CBO category as a whole and for the CTN membership group in particular.⁴⁴ The Commission directed that these budget caps be considered in Phase 3 of this proceeding.

AT&T, Sprint, and CALTEL all argue that the Commission should not impose a budget cap on the subcategory of health care/health services CBOs.⁴⁵ These parties argue that there is no compelling need for a cap and that the cap would increase program complexity and be difficult to administer. Sprint states

⁴⁴ *Id.* at 35-36.

⁴⁵ AT&T June 20, 2017 Comments at 1-2; Sprint June 20, 2017 Comments at 2-3; CALTEL June 30, 2017 Reply Comments at 1.

that the adoption of such a cap raises difficult issues regarding how to allocate limited health care/health services CBO funds among CBOs. Sprint also raises the operational issue of having to notify health care/health services CBOs well in advance that the budget cap would be reached so that the CBOs could budget accordingly.

TURN and CforAT support a budget cap for health care/health services CBOs as an appropriate mechanism to constrain growth of the fund, at least while the effectiveness of the new rules adopted in D.15-07-007 remain under review.⁴⁶ TURN and CforAT state that it is unclear that the Commission's previously expressed concerns regarding this category of CBOs becoming a disproportionately large draw on the fund have dissipated.⁴⁷ However, these parties state that there is inadequate information in the record to comment on the levels or logistics of implementing such a cap.

We find that a budget cap for the health care/health services CBO category should not be adopted at this time. There is a lack of information in the record as to what would be a reasonable level for such a cap.⁴⁸ Moreover, we agree with the parties opposing the cap that such a cap would be difficult to implement and administer and would create uncertainty for health care/health services CBO applicants regarding the availability of CTF funding.

Although D.15-07-007 declined to adopt a revenue cap for this category, upon further consideration of this issue, we find a revenue cap to be more

⁴⁶ TURN/CforAT June 30, 2017 Reply Comments at 5.

⁴⁷ *Ibid.* citing D.15-07-007 at 35.

⁴⁸ In contrast, in adopting a budget cap for the community colleges category, the Commission considered a study estimating the likely CTF draw for community colleges, which had been conducted by the CCCCO. (D.08-06-020 at 28.)

feasible to implement and administer than a budget cap. A revenue cap will also provide more certainty to qualifying CBOs regarding the availability of CTF funds.

Sprint is opposed to a revenue cap and argues that there is no meaningful correlation between the level of a health care CBO's revenues and the benefit to that CBO of receiving CTF support.⁴⁹ However, we still have concerns that the health care/health services CBO category could account for a large, incremental increase in CTF expenditures in the near term and find that, at least initially, there must be some mechanism to protect the financial integrity of the fund and mitigate potential adverse effects on other CTF program participants.⁵⁰ A revenue cap will provide some limits on this category until it can be established that the category will not detrimentally impact CTF.

Prior to D.15-07-007, all CBOs were required to have annual revenues of less than \$50 million to be eligible for CTF. In D.15-07-007, the Commission determined that CTF support is appropriately limited to small CBOs and lowered the annual revenue cap to \$5 million for all CBOs except 2-1-1 or health care/health services CBOs.⁵¹ Earlier in this proceeding, CforAT, the Greenlining Institute, and TURN had proposed retaining the \$50 million revenue cap for the health care/health services CBO category.⁵² We find it reasonable to retain the \$50 million revenue cap for health care/health services CBOs until the impact of

⁴⁹ Sprint June 20, 2017 Comments at fn. 5.

⁵⁰ See D.15-07-007 at 35-36.

⁵¹ *Id.* at 27.

⁵² CforAT, the Greenlining Institute, and TURN Comments on Phase I Issues, Phase II Issues, and Party Proposals, October 9, 2014 at 11.

this category on the fund can be ascertained.⁵³ For organizations with multiple sites, the organization may be eligible for a CTF discount at an individual location if it demonstrates that the individual location operates below the revenue threshold.

2.3.3. Eligibility Based on FQHC Qualification Process

FQHCs are federally subsidized local healthcare facilities that receive grant money from the Health Resources and Services Administration pursuant to Section 330 of the Public Health Services Act (42 U.S.C. § 254b). The Amended Scoping Memo posed the question of whether the FQHC qualification process was sufficiently similar to the CTF requirements such that qualification as a FQHC should be sufficient to qualify for CTF. The Second Amended Scoping Memo posed additional questions regarding how the Commission should evaluate the qualification process of FQHCs.

AT&T supports using the FQHC qualification process to determine eligibility for CTF.⁵⁴ AT&T states that this would simplify the eligibility process, and therefore, keep costs down.

Sprint states that is unaware of any reason for limiting the category of health care CBOs to those that meet the criteria of FQHC.⁵⁵ Sprint notes that assessing eligibility for CTF by relying on the FQHC criteria could result in both an under-inclusive and an over-inclusive list of health care CBOs eligible for CTF funding.

⁵³ Since the new CBO requirements from D.15-07-007 have not yet been implemented, all CBO applications, including applications from health care/health services CBOs, are currently subject to the preexisting \$50 million revenue cap.

⁵⁴ AT&T April 8, 2016 Comments at 7.

⁵⁵ Sprint June 20, 2017 Comments at 4.

Based on available information, we cannot conclude that the FQHC qualification process is sufficiently similar to the CTF requirements such that qualification as a FQHC should be sufficient to qualify for CTF. It is unclear how many FQHC centers would meet the CTF requirements. A review of the eligibility criteria for FQHCs demonstrates that there are some FQHC-eligible services that would not qualify for CTF.⁵⁶ Conversely, it is possible that there are entities that would be eligible for CTF that may not meet the FQHC requirements. The FQHC criteria are also subject to change based on federal law and requirements. Therefore, we do not find justification for basing CTF eligibility on the FQHC qualification process. Rather, CTF eligibility for health care/health services CBOs shall be based on the requirements set forth above in Sections 2.3.1 and 2.3.2.

3. Comments on Proposed Decision

The proposed decision of Commissioner Peterman 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 filed on January 3, 2018 by ORA, CalNonprofits, CforAT/TURN (jointly), and AT&T. Reply comments were filed on January 8, 2018 by CforAT/TURN (jointly) and AT&T.

CforAT/TURN and CalNonprofits oppose the PD's requirement that, in order to verify that qualifying services are at least 50% of a CBO's mission, CBOs provide information demonstrating that at least 50% of their employees' hours are spent working on qualifying services. Among other things, CforAT/TURN

⁵⁶ These services include environmental health services, sewage treatment, solid waste disposal, and rodent and parasitic infestation. (42 U.S.C. § 452b(b)(2).)

and CalNonprofits argue that the requirement would be administratively burdensome, may not be an appropriate way to demonstrate that qualifying services are at least 50% of the CBO's mission, may result in confusion regarding what employee time would count toward the 50% standard, and may result in eligible CBOs erroneously being disqualified. We agree that there is a lack of clarity as to how this requirement would be implemented and how CBOs should account for the time of their employees and volunteers. Therefore, we do not adopt this requirement at this time and instead direct CD to hold a workshop to address implementation details regarding the 50% employee hours' requirement. This requirement should be implemented in a manner that does not disqualify otherwise eligible CBOs whose participation furthers the goals of CTF. Other proposals for verifying that at least 50% of a CBO's mission consists of qualifying services may also be considered at the workshop.

ORA states that the PD causes confusion by using the terms "qualifying services" and "eligible services" interchangeably when those two terms refer to different types of services pursuant to D.15-07-007. The PD has been modified to clarify the use of these terms.

The PD requires a CBO to provide documentation that a majority of its board of directors reside within California. CforAT/TURN and CalNonprofits propose that the board member requirement should also be satisfied if the CBO provides documentation that a majority of the board of directors are members of the community of interest served by the CBO. CforAT/TURN argue that neither the PD nor D.15-07-007 addresses the scenario of organizations that support the needs of communities of interest (such as the disability community), rather than geographic communities. The PD has been modified to state that as long as the CBO's services are offered in California, the CBO may meet the

board of directors requirement by providing documentation that a majority of its board reside within California or are members of the community of interest served by the CBO.

CalNonprofits also argues that requiring the home addresses of board members violates their right to privacy. We clarify that providing the city and state that a board member resides in is sufficient and that specific addresses are not required.

CforAT/TURN and CalNonprofits request that the PD be modified to make clear that a variety of fee structures, and not just a sliding scale fee structure, would satisfy the requirement that a CBO offer its services without charge or at a minimal fee. The PD has been modified to clarify that a “minimal fee” is not limited to a sliding scale fee structure but includes other discounted or subsidized rates. We also clarify that voluntary suggested donations are not considered fees.

CforAT/TURN support the \$50 million revenue cap for health care/health services CBOs but requests that the PD be revised to include a specific time frame for future review of the cap. Given the uncertain time frame for processing CBO recertifications, we do not adopt a specific time frame for future review of the cap. Commission Staff should continue to monitor the fund and inform the Commission if the health care/health services CBO category is detrimentally impacting the fund.

ORA requests that all Commission divisions, including but not limited to ORA, have the authority to audit CTF participants. CforAT/TURN and AT&T oppose this request. ORA makes this recommendation for the first time in comments on the PD and additional details should be considered before

granting ORA this authority. Therefore, we do not grant ORA's request at this time.

AT&T recommends that the Commission establish a CTF Implementation Working Group to address various implementation details. CforAT/TURN are not opposed to AT&T's proposal but state that many of the issues AT&T raises would be more appropriately addressed either by formal submissions within the scope of this proceeding or by the CTF Administrative Committee. We anticipate that implementation details will be addressed in additional workshops, and therefore, do not find it necessary to establish a Working Group at this time. A Working Group may be established at a later date if, following workshops, parties believe it would be beneficial.

In addition to the modifications listed above, editorial changes have been made to the PD to improve its clarity and correct minor errors.

4. Assignment of Proceeding

Carla J. Peterman is the assigned Commissioner and Sophia J. Park is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The current procedure in place for making CBO eligibility determinations relies on information attested to by the CBO applicants along with a few specific documentation requirements.
2. There is no evidence that the current procedure for making CBO eligibility determinations has resulted in widespread abuse.
3. It is reasonable to continue to require CBO applicants to provide a few documentation specifics and to self-attest that they meet the eligibility requirements.

4. It is difficult to verify that qualifying services are 50% or more of a CBO's mission based solely on review of a CBO's mission statement.

5. Information regarding how much of a CBO's employees' hours are spent on qualifying services provides a possible method for quantifying the percentage of a CBO's mission that is devoted to qualifying services but additional implementation details must be considered.

6. The CTF program has previously accepted federal forms as proof of tax-exempt status and there is no demonstrated need for accepting alternate forms of proof.

7. It is reasonable to accept only the federal forms as proof of tax-exempt status.

8. By definition, CBOs are community-based and are required to offer services within a local geographic area in California.

9. Pursuant to D.15-07-007, a CBO must offer its services to anyone who needs them without charge or at a minimal fee. A health care/health services CBO is also eligible if it accepts Medicare or Medi-Cal.

10. There is a lack of information as to what would constitute a minimal fee.

11. What constitutes a minimal fee varies by type of CBO.

12. D.15-07-007 adopted more stringent eligibility criteria for CBOs than had previously been in place in order to ensure that CBO participation advances the goals of the CTF program.

13. So long as a CBO meets the relevant eligibility criteria adopted in D.15-07-007, it is unreasonable to otherwise reduce the CTF support for assumed administrative uses.

14. The Commission has not adopted an administration factor for any other category of CTF participants and there is a lack of justification for singling out the CBO category.

15. There is a lack of information as to what would be a reasonable level for a budget cap for the health care/health services CBO category.

16. A budget cap for the health care/health services CBO category would be difficult to implement and administer and would create uncertainty for health care/health services CBO applicants regarding the availability of CTF funding.

17. A per entity revenue cap for the health care/health services CBO category is more feasible to implement and administer than a budget cap.

18. Health care/health services CBOs are currently subject to a \$50 million annual per entity revenue cap.

19. The FQHC qualification process is not sufficiently similar to the CTF requirements.

Conclusions of Law

1. The application and recertification process for CBOs should not be overly complex or unduly burdensome for CBOs, Commission Staff, or carriers.

2. Self-enforcing rules for the application and recertification process, when feasible, should be adopted.

3. ORA's proposed procedure for verifying users imposes significant administrative burdens on CBOs and is unwarranted.

4. The CBO application and recertification process should be based on self-attestation along with a few documentation requirements.

5. Specific documentation regarding the CBO's tax-exempt status and revenues and Part III of the CBO's most recent IRS Form 990 should continue to be required.

6. Additional implementation details should be considered before the Commission adopts a method to verify that at least 50% of a CBO's mission consists of qualifying services.

7. The requirement that a majority of members of the Board of Directors be members of the community the CBO serves should be met if the CBO demonstrates that a majority of the board members reside within the state or that a majority of its board members are members of the community of interest being served.

8. In order to demonstrate that it meets the definition of a CBO, an entity should provide information regarding charges for its services.

9. A CBO's offering of services at a discounted or subsidized rate, including on a sliding scale, sufficiently demonstrates that the CBO serves communities with greater financial need.

10. The procedure for appealing a CTF eligibility determination should be formalized in a Commission resolution.

11. It should be clarified that the requirement that a health care/health services CBO must be staffed by licensed medical personnel on site means that the licensed medical personnel must provide qualifying health care services to patients and not just provide administrative services.

12. Qualifying health care services for a health care/health services CBO should include all services covered by any Californian medical insurance or government funded medical plan.

13. It is reasonable to place some limits on the health care/health services CBO category until the impact of this category on the fund can be determined.

14. A budget cap for the health care/health services CBO category should not be adopted.

15. The \$50 million annual revenue cap for health care/health services CBOs should be retained until the impact of this category on the fund can be ascertained.

16. Eligibility for CTF should not be based on the FQHC qualification process.

O R D E R

IT IS ORDERED that:

1. The application and recertification process for community-based organizations (CBOs) shall require the applicant or participant to attest to the fact that it meets the relevant eligibility requirements. The CBO shall provide all required information and supporting documentation, including any documentation specifically required pursuant to Decision 15-07-007 and today's decision, that will enable Communications Division (CD) Staff to make the necessary eligibility determinations. This required documentation includes proof of tax-exempt status, proof of revenues, and documentation demonstrating that the CBO provides qualifying service(s) at a specific location. CD Staff may request additional information or supporting documentation as required to make the necessary eligibility determinations.

2. Communications Division (CD) Staff is directed to hold a workshop to address implementation of the requirement that qualifying services are at least 50% of a community-based organization (CBO)'s mission, including but not limited to the proposal that CBOs provide information demonstrating that at least 50% of their employees' hours are spent working on qualifying services. CD Staff shall announce a date for the workshop within 45 days of the issuance of this decision.

3. To be eligible to receive a California Teleconnect Fund discount, the community-based organization (CBO) shall provide information demonstrating that a majority of its board members reside within the state or are members of the community of interest served by the CBO (such as disability).

4. In order to meet the definition of a community-based organization (CBO), an entity must provide information demonstrating that it provides its services without charge to the community or with a fee structure that includes discounted or subsidized rates, including but not limited to on a sliding scale fee based on income and capacity to pay. A health care/health services CBO is also eligible if it demonstrates that it accepts Medicare or Medi-Cal.

5. Communications Division Staff may audit participants to ensure continued eligibility.

6. Within 45 days of the issuance of this decision, Communications Division Staff shall issue a proposed resolution setting forth a procedure for California Teleconnect Fund applicants and participants to appeal their eligibility determination.

7. Communications Division Staff shall explore and implement feasible options for making the California Teleconnect Fund program administration web-based.

8. In addition to the health care/health services community-based organization (CBO) requirements adopted in Decision 15-07-007 and general CBO eligibility criteria, health care/health services CBOs must meet the following requirements:

- The licensed medical personnel that are required to be on site must provide health care services to patients and not just provide administrative services.

- Eligible health services shall include those covered by any Californian medical insurance or government funded medical plan such as Medi-Cal, Medicare, or the Department of Veterans Affairs insurance.
- The health care/health services CBO must have annual revenues of less than \$50 million.

9. Rulemaking 13-01-010 remains open.

This order is effective today.

Dated January 11, 2018, at San Francisco, California.

MICHAEL PICKER

President

CARLA J. PETERMAN

LIANE M. RANDOLPH

MARTHA GUZMAN ACEVES

CLIFFORD RECHTSCHAFFEN

Commissioners