

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

FILED
PUBLIC UTILITIES COMMISSION
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SAN FRANCISCO, CA
RULEMAKING 13-01-010

ORDER INSTITUTING RULEMAKING TO CONDUCT A COMPREHENSIVE EXAMINATION OF THE CALIFORNIA TELECONNECT FUND

1. Summary

The California Teleconnect Fund (CTF) provides a 50% discount on a menu of communications services to qualifying schools, libraries, government and hospital district-owned healthcare facilities, community colleges, the California Telehealth Network, and community-based organizations in California. Communications carriers collect funds to support the CTF via a line-item surcharge assessed on revenues derived from end-users' intrastate services. The Commission has stated that the CTF is an important strategy for fostering the development of a state-of-the-art telecommunications infrastructure for California and reducing the digital divide.¹

The Commission institutes this Rulemaking on its own motion to determine whether the CTF is fulfilling its purpose, and whether the CTF's current structure and administrative processes are adequate to further the

¹ Decision (D.) 96-10-066 at 89; see also D.08-06-020 at 27 (both of which are discussed in detail below).

program's goals. In opening this Rulemaking, the Commission intends to further the important goal of bringing the benefits of advanced communications services to all Californians, while also ensuring that California ratepayers' money is spent prudently.

2. California Teleconnect Fund History

The Commission established the California Teleconnect Fund (CTF) in the 1996 Decision (D.) 96-10-066, in response to Assembly Bill 3643 (Chapter 278, Statutes of 1994). The Commission found that the CTF would advance the following goals:

1. Innovation in the delivery and use of advanced communications;
2. Diversity of choices among services and providers; and
3. Affordable, widespread access to California's public networks and to the resources tied to those networks.²

The Commission initially set the CTF budget at \$50 million, although the Commission may increase the CTF budget by resolution. Subsequent resolutions and legislation have modified the program to increase benefits, increase the program budget, and expand the list of communications services eligible for discount.³

² D.96-10-066 at 89.

³ For example: Resolution T-16742, issued on July 12, 2001, added higher bandwidth services such as OC-1, OC-3, OC-12, OC-48, and OC-192 to the list of supported services; Senate Bill 720 amended Pub. Util. Code § 884 to authorize the Commission to expend up to \$3 million to provide a 40% discount on new installation charges for advanced services; and Resolution T-17290, issued on September 2, 2010, increased the CTF budget to \$75.207 million for fiscal year 2011 - 2012.

The CTF program was codified into law in 1999. Pub. Util. Code § 280(a) directs the Commission to “develop, implement, and administer a program to advance universal service goals by providing discounted rates” to qualifying entities.

The Federal Communications Commission (FCC) created a comparable program, the “E-rate” program, for subsidizing communications service offerings, primarily to schools and libraries. In 2004, the Legislature required that the Commission apply the federal E-rate discount prior to the CTF discount.⁴ Consequently, the CTF was able to leverage its monies to cover more participants and services.

In 2006, the Commission opened Rulemaking (R.) 06-05-028, to review all of the communications public purpose programs, including the CTF. In 2008, the Commission issued a decision in that Rulemaking, D.08-06-020, which made several changes to the CTF, including the following:

- Expanding the menu of communications services eligible for discount;
- Adding community colleges, California Telehealth Network participants, and 2-1-1 Information and Referral Service providers to the entities eligible to receive the CTF discount; and
- Eliminating the requirement that CTF-eligible services be tariffed.⁵

⁴ Pub. Util. Code § 884.5. The CTF discount is based on the amount the customer paid for the services less the actual E-rate discount the customer received. If there is no actual E-rate discount, the Commission uses the statewide average E-rate discount.

⁵ The tariff requirement no longer applies to services offered on a non-regulated or detariffed basis. D.08-06-020 at Ordering Paragraph 8.

The Commission also addressed service provider eligibility, finding that “voluntary participation by providers of cable broadband and wireless Internet access services is an acceptable alternative to getting CTF discounts to all qualifying entities who desire such services.”⁶ Accordingly, the Commission allowed telephone corporations (including wireless providers) “to provide advanced services eligible for CTF discounts through affiliated entities or through partnerships.”⁷ The Commission sought to “make CTF as competitively neutral as possible and encourage broadband providers that are affiliated with entities that have [Certificates of Public Convenience and Necessity], such as cable Internet providers, to provide discounted service. . . .”⁸

In D.08-06-020, the Commission further found that the CTF was “working well to advance [the Commission’s] universal service goals,” and that “the users of this program particularly appreciate its simplicity.” The Commission was concerned about one aspect of this simplicity, however: under the administrative procedures in effect at the time of the decision (and still in effect today), an entity is required to demonstrate eligibility for the CTF discount only once, at the time of its initial application. The Commission determined in D.08-06-020 that “a regular periodic review at least every five years should be conducted to ensure the most current information about the eligibility of the entities is evaluated by the Commission.”⁹

⁶ *Id.* at 30.

⁷ *Id.* at 31.

⁸ *Id.* at 32.

⁹ *Id.*

Today, the CTF program has over 7,000 participants and a Commission-adopted budget of \$92.2 million for Fiscal Year 2012 - 2013.¹⁰ The budgets are financed by a surcharge of 0.59%, effective December 1, 2012.¹¹ Over half of the approved participants are Community-Based Organizations (CBOs). CBO participation is expected to increase as a result of an outreach program for CBOs and government health care entities.¹² CBOs qualify for CTF discounts if they provide job training, job placement, 2-1-1 information and referral, health care, educational, or community technology program services.¹³

3. Discussion

In this Rulemaking, the Commission seeks comment on the eligibility review contemplated by the Commission in D.08-06-020, as well as other aspects of the CTF not addressed in D.08-06-020, as discussed below.

3.1. Goals

First and foremost, the Commission seeks comments on whether the Commission should change the CTF's goals, which have been in place since the program began in 1996. Will there be a point at which the CTF will have

¹⁰ Resolution T-17333 (August 18, 2011).

¹¹ The CTF has been financed substantially by loan repayments from the general fund, which will end in fiscal year 2012 - 2013. Therefore, the program now requires a significant increase in the surcharge rate from the prior rate of 0.07990.

¹² The CTF Administration Committee - which advises the Commission on the development, implementation, and administration of the CTF program pursuant to Pub. Util. Code § 280(b) - recommended in its November, 2006 Marketing Outreach Strategy Report that the Commission initiate an outreach program for CTF-eligible entities. In August 2011, the Commission contracted with a marketing firm to conduct outreach to CBOs and government-owned hospitals and health care clinics.

¹³ See D.96-10-066, Appendix B at 8(D)(1); Res. T-16742 (May 8, 2003), and D.08-06-020 at 32.

satisfied its purpose and the Legislature should eliminate it? If not, should the CTF's goals adapt to technological and market changes, and if so, how should the program adapt? How should the Commission define the goals so that the Commission can assess if the program has been successful? How may the Commission determine whether the goals are being met? For example, what evidence might assist the Commission in determining whether the CTF is facilitating the deployment of advanced communications infrastructure to California more quickly than it would otherwise have been deployed?

3.2. Eligibility

Due to the rapid pace of change in the communications industry, it is crucial that the Commission regularly review the CTF to ensure that the program's subsidies flow to its intended recipients, and that the CTF's performance is consistent with the goals of supporting advanced communications infrastructure services.

3.2.1. Participants

D.96-10-066 provides that only a tax-exempt organization offering health care, job training, job placement, or educational instruction, shall qualify for the discounted rates for CBOs. Subsequently, the Commission added two more categories: community technology programs¹⁴ and 211 information and referral service.¹⁵ This language has provided minimal guidance to staff in its review of CBO requests for eligibility to participate in the CTF. Accordingly, the Commission seeks comment on how the Commission may provide additional

¹⁴ Resolution T-16742.

¹⁵ D.08-06-020 at Ordering Paragraph 7.

rules and/or guidelines for staff to use in evaluating a CBO applicant's eligibility to receive benefits from the CTF.

For example, the current eligibility category of CBOs providing "educational services" is extremely broad and is subject to varying interpretations, which in turn can produce inconsistent application of the criterion. Should the Commission more explicitly define the categories of services that qualify CBOs for CTF discounts? If so, what changes should the Commission make to the current categories? What additional refinements should be made to the eligibility criteria to ensure that any discount provided to an entity advances the CTF's goals?

In addition, when the Commission established the CTF in 1996, the Commission clearly contemplated that CBOs would provide internet access to their constituents:

CBOs will also find it less costly to connect to the information superhighway, and provide their constituencies with access.

...

By providing qualifying CBOs with discounts for high speed data connection, these CBOs can better serve their constituencies, and provide the communities they serve with increased access to the telecommunications network, thereby decreasing the stratification between information rich and information poor communities.¹⁶

Has the CTF been successful in bringing access to advanced communications networks to Californians who would otherwise not have access? Is the CBOs' role as access portal to the telecommunications network captured by

¹⁶ D.96-10-066 at 90-91.

the existing qualifying criteria? Should a portion of CTF expenditures be dedicated to providing internet access to disadvantaged communities?

Should the “educational services” criterion be based, in whole or in part, on teaching consumers how to use advanced communications networks to access resources and services (e.g., educational, financial, governmental)?

Should a minimum level of CBO qualifying services be required and/or CBOs be limited to serving local communities only? Is CBO participants’ self-certification of qualifying services sufficient to ensure CTF goals are being met?

3.2.2. Services and Service Providers

The Commission seeks comment on the services eligible for the CTF discount, as well as the conditions placed on service providers desiring to offer those eligible services.

3.2.2.1. Services

Is the list of eligible services consistent with the goals of the CTF? Should the Commission eliminate some services from the list, or make them eligible for smaller subsidies? Is the CTF subsidy justified for all existing eligible services given the technological options currently available? Similarly, with evolving technology and markets, many services are now intertwined and are bundled as a single product. How should the Commission treat bundled products, which contain both eligible and non-eligible CTF services? Now that many of the services are detariffed, what guidelines and processes should staff follow to determine whether a given communications service is the “functional equivalent” of an eligible service? How should internet access be defined?

Should the Commission continue to use the federal E-rate definition, and is that definition appropriate for all participants?¹⁷

The Commission also seeks comments on the coordination of the CTF discounts and the federal E-rate discounts. Should services eligible for E-rate discounts, such as dark fiber, also be eligible for CTF discounts to avoid distorted consumption decisions and inefficient allocation of resources? Alternatively, should services receiving federal discounts receive a lower CTF percentage discount?

Additionally, are there equity and sustainability issues when services eligible for CTF discounts are not subject to the public purpose program surcharges that fund the discounts? For example, internet access service is not regulated by the Commission and is therefore not subject to the public program surcharges. However, CTF participants receive discounts on their internet access service.

3.2.2.2. Providers

With respect to providers, the Commission seeks comment on whether the CTF's exclusion of service providers not subject to the Commission's regulatory authority results in sub-optimal choice of services and distribution of subsidies. For example, should the CTF mirror the FCC and allow non-profits to provide dark and lit fiber services to CTF participants? Conversely, can the Commission

¹⁷ See the Universal Service Administration Committee Eligible Services List, Schools and Libraries Support Mechanism (stating that "internet access" is a form of information service, which is defined as "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications"), available at http://fjallfoss.fcc.gov/edocs_public/attachmatch/FCC-08-265A2.pdf.

allow service providers not subject to its regulatory authority to participate in the CTF and still comply with its duty to ensure that customer money is spent responsibly? Can the current process of partnerships with certificated carriers and registered wireless providers be applied to non-profits?

3.3. Budget and Administration

The CTF budget has risen since D.08-06-020, increasing from \$33.3 million in fiscal year 2008 - 2009 to more than \$75 million in fiscal year 2011 - 2012. Although the increase in expenditures may be attributed to program outreach and greater awareness of CTF, the additional expenditures also place a greater burden on ratepayers. It is therefore prudent to examine the CTF's administrative processes, internal controls, and goals to ensure that funds are being spent appropriately.

For example, the Commission took steps to control the growth of the CTF in both the decision creating the CTF, D.96-10-066, and in its review of the CTF in D.08-06-020. Are the factors that have contributed to the recent growth in the CTF budget consistent with CTF goals? Have the expansions in D.08-06-020 and the outreach program exceeded the Commission's objectives for the CTF? Are there other factors that have contributed to CTF budget growth? Do any Commission or legislative measures serve as a check on the growth of the CTF? Should there be restrictions on the program to control budget growth? What types of restrictions are administratively feasible given limited staff resources? Should there be a dollar discount cap for each type of service? Should the Commission reconsider the \$50 million endowment cap for schools? Should the Commission use another measure of financial need for schools or other entities receiving CTF-discounted services? What mechanisms can the Commission use to prevent service providers from (a) using the CTF discounts as leverage for

selling “gold-plated” services that are beyond the participant’s needs or (b) circumventing prohibition of CTF discounts on equipment by tying “free equipment” to a long-term contract for CTF-eligible services?

Furthermore, during these tight budgetary times, monitoring fund balances is especially critical. The monitoring process is complicated by the current rule that allows the carriers one year, and 45 days from the claim month to file their claims. Should the time for filing claims be reduced?

4. Preliminary Scoping Memo

This Rulemaking will be conducted in accordance with Article 6 of the Commission's Rules of Practice and Procedure.¹⁸ As required by Rule 7.3, this order includes a preliminary scoping memo as set forth below.

4.1. Issues

The issues to be considered in this proceeding, as discussed earlier in this Order Implementing Rulemaking, are to determine whether the CTF is fulfilling its purpose, and whether the CTF’s current structure and administrative processes are adequate to further the program’s goals. The Commission will seek comment on:

- CTF goals;
- Entities applying for and receiving the CTF discount;
- Services eligible for the CTF discount;
- Conditions placed on providers desiring to offer those services; and
- CTF budget, administration, and internal controls.

¹⁸ All references to Rules are to the Commission’s Rules of Practice and Procedure.

4.2. Category of Proceeding and Need for Hearing

Rule 7.1(d) requires that an Order Instituting Rulemaking (OIR) preliminarily determine the category of the proceeding and the need for hearing. As a preliminary matter, we determine that this proceeding is a “quasi-legislative” proceeding, as that term is defined in Rule 1.3(d). It is contemplated that this proceeding shall be conducted through written comments and possibly, Public Participation Hearings, without the need for evidentiary hearings.

Anyone who objects to the preliminary categorization of this Rulemaking as “quasi-legislative,” or to the preliminary hearing determination, must state the objections in opening comments to this Rulemaking. If the person believes hearings are necessary, the comments must state:

- a) The specific disputed fact for which hearing is sought;
- b) Justification for the hearing (e.g., why the fact is material);
- c) What the party would seek to demonstrate through a hearing; and
- d) Anything else necessary for the purpose of making an informed ruling on the request for hearing.

After considering any comments on the preliminary scoping memo, the assigned Commissioner will issue a scoping memo that, among other things, will make a final category determination; this determination is subject to appeal as specified in Rule 7.6(a).

4.3. Schedule

For purposes of meeting the scoping memo requirements, and to expedite the proceeding, we establish the following preliminary schedule:

DATE	EVENT
(20 days from mailing of this OIR)	Deadline for requests to be on service list
30 days from mailing	Initial Comments filed and served
45 days from mailing	Reply Comments filed and served
TBD	Prehearing Conference
TBD	Scoping Memo

The assigned Commissioner through his/her ruling on the scoping memo and subsequent rulings, and the assigned Administrative Law Judge (ALJ) by ruling with the assigned Commissioner’s concurrence, may modify the schedule as necessary during the course of the proceeding. We anticipate this proceeding will be resolved within 18 months from the issuance of the scoping memo.

5. Service List and Subscription Service

The temporary service list for this proceeding shall be the service list from Rulemaking 06-05-028, the last proceeding that reviewed the CTF.

Within 20 days from the date of mailing of this order, any person or representative of an entity seeking to become a party to this Rulemaking (i.e., actively participate in the proceeding by filing comments or appearing at workshops) should send a request to the Commission’s Process Office, 505 Van Ness Avenue, San Francisco, California 94102 (or Process_Office@cpuc.ca.gov) to be placed on the official service list. Individuals seeking only to monitor the proceeding (i.e., but not participate as an active

party) may request to be added to the service list as “Information Only.” Include the following information:

- Docket Number of the OIR;
- Name and Party Represented, if Applicable;
- Postal Address;
- Telephone Number;
- E-mail Address; and
- Desired Status (Party or “Information Only”).

The service list will be posted on the Commission’s website, www.cpuc.ca.gov soon thereafter.

The Commission has adopted rules for the electronic service of documents related to its proceedings, Rule 1.10, available on our website at http://www.cpuc.ca.gov/PUBLISHED/RULES_PRAC_PROC/44887.htm. We will follow the electronic service protocols adopted by the Commission in Rule 1.10 for all documents, whether formally filed or just served.

This Rule provides for electronic service of documents, in a searchable format, unless the appearance or state service list member did not provide an e-mail address. If no e-mail address was provided, service should be made by United States mail. In this proceeding, concurrent e-mail service to all persons on the service list for whom an e-mail address is available will be required, including those listed under “Information Only.” Parties are expected to provide paper copies of served documents upon request.

E-mail communication about this OIR proceeding should include, at a minimum, the following information on the subject line of the e-mail:

R. [xx xx xxx] – OIR on California Teleconnect Fund. In addition, the party sending the e-mail should briefly describe the attached communication; for

example, “Comments.” Paper format copies, in addition to electronic copies, shall be served on the assigned Commissioner and the ALJ.

This Rulemaking can also be monitored through the Commission’s document subscription service; subscribers will receive electronic copies of documents in this Rulemaking that are published on the Commission’s website. There is no need to be on the service list in order to use the subscription service. Instructions for enrolling in the subscription service are available on the Commission’s website at <http://subscribecpuc.cpuc.ca.gov/>.

6. Public Advisor

Any person or entity interested in participating in this OIR who is unfamiliar with the Commission’s procedures should contact the Commission’s Public Advisor in San Francisco at (415) 703-2074 or (866) 849-8390 or e-mail public.advisor@cpuc.ca.gov; or in Los Angeles at (213) 576-7055 or (866) 849-8391, or e-mail public.advisor.la@cpuc.ca.gov. The TTY number is (866) 836-7825.

7. Intervenor Compensation

Any party that expects to request intervenor compensation for its participation in this OIR shall file its notice of intent to claim intervenor compensation in accordance with Rule 17.1 within 30 days of the filing of reply comments or of the prehearing conference, whichever is later.

8. Ex Parte Communications

Ex parte communications are defined in Rule 8.1. In quasi-legislative proceedings such as this one, *ex parte* communications are allowed without restriction or reporting requirement as set forth in Rule 8.3.

Therefore **IT IS ORDERED** that:

1. An Order Instituting Rulemaking is instituted on the Commission's own motion for the purpose of determining whether the California Teleconnect Fund (CTF) is meeting its statutory goals, and whether the CTF's current structure and administrative processes are adequate to further the program's goals.

2. This Rulemaking is preliminarily determined to be a quasi-legislative proceeding, as that term is defined in Rule 1.3(d), and it is preliminarily determined that no hearings are necessary.

3. The outcome of this Rulemaking will be applicable to all telephone corporations as defined in Pub. Util. Code § 234, and to all entities that currently receive the California Teleconnect Fund (CTF) discount, or that may receive the CTF discount in the future, even if they do not participate.

4. The Executive Director shall cause this Order Instituting Rulemaking to be served on all telephone corporations, including wireless carriers, and on the service list for Rulemaking 06-05-028.

5. The preliminary schedule for this proceeding is as set forth in the body of this Order Instituting Rulemaking. The assigned Commissioner through his/her scoping memo and subsequent rulings, and the assigned Administrative Law Judge by ruling with the assigned Commissioner's concurrence, may modify the schedule as necessary.

6. The issues to be considered in this Order Instituting Rulemaking (OIR) are those set forth in the body of this OIR.

7. Comments and reply comments must be filed 30 and 45 days, respectively, from the mailing of this Order Instituting Rulemaking, unless the assigned Commissioner or Administrative Law Judge modifies the schedule. Comments

and reply comments shall conform to the requirements of the Commission's Rules of Practice and Procedure.

8. Any persons objecting to the preliminary categorization of this Order Instituting Rulemaking (OIR) as "quasi-legislative," or to the preliminary determination on the need for hearings, issues to be considered, or schedule shall state their objections in their opening comments of this OIR.

9. Within 20 days of the date of issuance of this order, any person or representative of an entity seeking to become a party to this Order Instituting Rulemaking must send a request to the Commission's Process Office, 505 Van Ness Avenue, San Francisco, California 94102 (or Process_Office@cpuc.ca.gov) to be placed on the official service list for this proceeding. Individuals seeking only to monitor the proceeding, but not participate as an active party may request to be added to the service list as "Information Only."

10. After initial service of this order, a new service list for the proceeding shall be established following procedures set forth in this order. The Commission's Process Office will publish the official service list on the Commission's website (www.cpuc.ca.gov) as soon as practical. The assigned Commissioner, and the assigned Administrative Law Judge, acting with the assigned Commissioner's concurrence, shall have ongoing oversight of the service list and may institute changes to the list or the procedures governing it as necessary.

11. Any party that expects to claim intervenor compensation for its participation in this Order Instituting Rulemaking shall file its notice of intent to claim intervenor compensation in accordance with Rule 17.1 of the Commission's Rules of Practice and Procedure, within 30 days of the filing of reply comments or of the prehearing conference, whichever is later.

This order is effective today.

Dated January 24, 2013, at San Francisco, California.

MICHAEL R. PEEVEY
President
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
MARK J. FERRON
CARLA J. PETERMAN
Commissioners