

**From:** Elizabeth Bojorquez  
**To:** [CA Broadband Council](#)  
**Subject:** CCTA Comments on Draft Broadband Action Plan  
**Date:** Friday, November 20, 2020 11:51:34 AM  
**Attachments:** CCTA on CBC Draft BB Action Plan 11.20.20.pdf

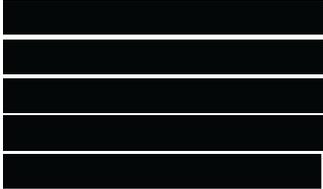
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Good Afternoon:

Attached please find comments from the CA Cable and Telecommunications Association on the Draft State Broadband Action Plan.

Thank you,

Elizabeth Bojorquez  
California Cable & Telecommunications Association





Carolyn McIntyre  
President

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SACRAMENTO, CA 95814



November 20, 2020

Amy Tong  
Director, California Department of Technology  
1325 J Street Suite 1600  
Sacramento, CA 95814

**Re: Comments on State Broadband Action Plan**

Dear Director Tong:

The California Cable & Telecommunications Association (“CCTA”) appreciates the opportunity to submit to the California Broadband Council (“CBC”) the comments below that respond to the draft State Broadband Action Plan (“Plan”) released November 17, 2020, and discussed by the CBC at its meeting on November 18, 2020. These comments supplement CCTA’s input already provided through a letter dated September 17, 2020, and three policy briefs that:

- (1) set forth the rationale for California broadband policy to be technology neutral;
- (2) refute unsupported assertions that fiber-optic facilities are the superior technology for all communications infrastructure; and
- (3) describe usage data and service speeds of cable industry broadband networks that are meeting customers’ needs during the pandemic.

As stated previously, CCTA supports the goals of the Governor’s Executive Order N-73-20 on broadband (“EO”) and the directive that the CBC adopt a Plan by December 31, 2020. CCTA’s comments are organized to track the sections of the draft Plan.

### Broadband Today

- CCTA understands that the draft Plan seeks to highlight the challenges to get all Californians connected in order to frame action items. However, the description providing a snapshot of today’s broadband service lacks any detail about the significant private sector investment and robust networks that are available to nearly all Californians – and that have performed extraordinarily well as traffic and usage patterns shifted during the pandemic, as described in CCTA’s policy briefs. Additional expansion of these privately funded networks – aided by policies and action items in the Plan to remove barriers to new deployment – are part of the solution to connect the remaining unserved households.

- CCTA is concerned with the many broad sweeping assertions of fact in the Plan, most of which lack any citation. The source of data and authority relied upon for factual assertions should be disclosed so that the public can respond. As the Plan is finalized and annually updated, these factual assertions could become the predicate for policy proposals that are not yet apparent and that would therefore be flawed because of an inaccurate premise and/or unreliable data source.
- The CBC meeting presentation indicated that the Plan may be modified to include a declaration that broadband is a “right.” Given that a “right” is a legal construct, typically originating in the federal or state constitution (i.e., the right to free public education in California Constitution Article IX, Sections 1 and 5), CCTA is concerned with the CBC publishing an official document drawing a legal conclusion in the absence of transparency of the legal basis – if any – and the legal implication of declaring broadband to be a “right.”

### Core Challenges

- CCTA is concerned that this section, like “Broadband Today,” includes many broad sweeping assertions of fact, without citation, about existing broadband service. These include, among others, the following:
  - The assertion on page 5 that a family needs at least 20 Mbps downstream and 17 Mbps upstream. This assertion and the associated charts of a typical family’s broadband usage has no citation to the source of the data relied upon. Nor does this discussion indicate whether the CBC considered the information provided by CCTA regarding documented broadband usage during the pandemic. Moreover, there appears to be no consideration of customer premise equipment’s impact on purported speed requirements.
  - The assertion on page 6 that the California Public Utilities Commission (“CPUC”) report of 96.3% of California households having access to at least 25/3 service “likely over-represents” actual broadband availability has no explanation or citation.
  - The assertion on page 7 that “high-performance broadband that is available may be prohibitively expensive” has no citation. This statement also appears to assume a one-size-fits-all broadband service requirement for everyone without acknowledging that individual consumers choose the service that meets their needs among many options offered at different price points, different speeds, and through various technologies.

- CCTA is concerned about the report on page 7 emphasizing the CPUC study on the cost of deploying fiber to the premise “to every unserved and underserved location in California” and the statement that this study “will help the state to target funding and deployment, and to measure progress.” This discussion appears to reflect a view that fiber is the preferred technology to connect end-users and not any consideration of the CCTA policy brief describing robust high-speed broadband service offered through hybrid fiber-coaxial and other non-fiber technologies.
- The assertion on page 8 that the “market price of broadband is high, largely because there is very little fixed-broadband competition” has no citation or explanation and fails to acknowledge the huge amount of capital and workforce necessary to operate, maintain and expand the robust broadband networks that have performed extraordinarily well during the pandemic as virtually all aspects of life moved online. Moreover, this assertion is contrary to the CPUC competition report two years ago finding that the vast majority of Californians have access to numerous options for high-speed broadband. The CPUC found that, as of 2017, 87% of the California households have internet access from three or more providers at speeds that are deemed to be “served” under California law, and that almost 70% of California households have access to three or more providers offering higher speed tiers such as 25/3 Mbps.<sup>1</sup> Those numbers have increased even further given the huge investment in broadband deployment in recent years.
- The paragraph on page 8 that states “we need to adopt new models....that employ a service-based competition model” involving multiple service providers competing for customers is vague and does not clearly describe either the old models apparently viewed as inadequate or the new models contemplated. Moreover, to the extent the draft Plan envisions a scenario of multiple service providers competing for customers, it is unclear how this would be viable and meet the challenge of connecting households in areas where the lack of a business case for even one provider has made those areas unserved in the first place. If the intent is that state programs should deploy fiber to households already served by an existing provider, CCTA would strongly object as a violation of the prohibition on use of public funds to overbuild.
- Regarding the discussion on page 9 about collecting more data, including customer subscription information, CCTA appreciates, as discussed at the CBC meeting, that the Plan may be modified to acknowledge the need to avoid collection and public disclosure of providers’ proprietary information. The Plan should also recognize protection under state and federal law of customers’ private information, confidential trade secret information, and critical infrastructure information, among other categories.

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<sup>1</sup> Communications Division of the California Public Utilities Commission, “Retail Communications Services in California” (December 2018) at 15.

### How We Can Get Started

- CCTA appreciates that the CBC, as referenced on page 10, reviewed previous plans and goals, which CCTA assumes includes the 2008 Final Report of the California Broadband Task Force.<sup>2</sup> CCTA recommends that this 2020 Plan include at least some detail of the key recommendations in the 2008 Task Force Report, whether these recommendations were successfully implemented, and, if not, why not. This historical reference – particularly given that some of the current CBC members also served on the 2008 Task Force – would help ensure that the new Plan accounts for successes and failures in implementing the 2008 recommendations.
- CCTA proposes that an additional action item be included under Goal 1 to specify that the CPUC promptly report to the Legislature the results of the audit of the California Advanced Services Fund (“CASF”) program, which was due April 1, 2020, as required by Public Utilities Code Section 912.2. When the Legislature, through AB 1665 (Garcia 2017), authorized the CPUC to collect an additional \$330 million from Californians for the CASF program, it required this report to ensure transparency and prudent use of customer surcharge funds to achieve the CASF program goal. The Plan should reflect the audit findings.
- CCTA supports the Plan on page 10 adopting 25/3 Mbps as the broadband service speed to define “unserved” for purposes of awarding public funds for broadband deployment.
- CCTA supports the plan on page 10 referencing 100 mbps downstream speed, consistent with the EO, as the goal for a “build-to” speed for publicly funded broadband projects. As discussed in detail in CCTA’s policy brief on broadband service speeds, actual customer usage data does not justify state policy adopting symmetrical speeds.
- CCTA is concerned with action item 1-B on page 11 to adopt “affordability” standards with reference to the CPUC’s proceeding on affordability. CCTA cautions against any recommendation trending toward rate regulation of broadband service, which is unlawful and would be preempted by federal law. Moreover, CCTA notes that the CPUC’s affordability framework intentionally excludes consideration of customer surcharges and taxes, contrary to the draft Plan acknowledging on page 7 that taxes and fees imposed by the government are an unavoidable cost of many services.
- CCTA is concerned with action item 1-C on page 11 for the same reasons stated above regarding the paragraph on page 8 on “new models.”

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<sup>2</sup> [https://www.cetfund.org/wp-content/uploads/2020/08/2008\\_CBC\\_TaskForce\\_Final\\_Report.pdf](https://www.cetfund.org/wp-content/uploads/2020/08/2008_CBC_TaskForce_Final_Report.pdf)

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- CCTA supports action items 1-E, 2-D, and 2-E on page 11 aimed at removing permitting barriers that delay broadband deployment, but requests that the Plan be modified to emphasize that these barriers should be addressed for deployment with both private investment and public broadband funds.
- CCTA supports action item 1-G on page 11 on state contracting for the efficient purchase of broadband service and encourages the CBC to specifically call out the opportunity for the state and/or local school districts to enter into sponsored service agreements in order to immediately get eligible low-income students signed up for free or low-cost broadband plans that will enable distance learning.
- Regarding the action items under Goal 2 on page 12, CCTA recommends that the Plan reflect that, in order to be lawful and not preempted by federal law, provider participation in the LifeLine program must be voluntary, and the service providers' low-cost broadband plans must remain voluntary and not subject to regulatory mandates.

CCTA commends the CBC for all the hard work in preparing the Plan and respectfully requests that the draft Plan be modified as described herein.

Thank you for your consideration.

Sincerely,

*Carolyn McIntyre*

**CAROLYN MCINTYRE**

President