

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Consider
Modifications to the California Advanced
Services Fund.

Rulemaking 12-10-012

REPLY COMMENTS OF AT&T ON PHASE II STAFF PROPOSAL

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Pursuant to the schedule set forth in the *Amended Scoping Memo and Ruling of Assigned Commissioner*, issued February 14, 2018 in the above-captioned docket (“Amended Scoping Memo”), AT&T¹ hereby provides its Reply Comments on the Phase II Staff Proposal appended to the Amended Scoping Memo as Appendix C (“Appendix C”).

I. INTRODUCTION

The overarching theme of AT&T’s Comments on Staff’s proposal is that the process for awarding CASF Broadband Infrastructure funds should be simple, as speedy as possible, and promote more provider participation. Some commenters, however propose more reliance on vague considerations or factors not consistent with AB 1665, which would only muddy the process, and some propose measures that would deter participation and thereby undermine the goals of the CASF program. As we discuss in more detail below, the Commission should decline such proposals and focus instead on revising the CASF program to best achieve its purposes and promise or increasing the availability of 10/1 or faster internet service.

Participation in the CASF program by private-sector providers is voluntary, as it should be in today’s competitive communications world. Thus, in reframing the CASF program, the Commission should focus on steps that encourage more voluntary participation. The more private-sector providers that voluntarily apply for funding, the more people who are currently “unserved” will receive at least 10/1 broadband service. And the more people that get access to such internet access and broadband-enabled technologies, the more they will be able to take advantage of the improved educational opportunities, cost-effective and higher quality health care,

¹ Pacific Bell Telephone Company d/b/a AT&T California (U 1001 C); AT&T Corp. (U 5002 C); Teleport Communications America, LLC (U 5454 C); and AT&T Mobility LLC (New Cingular Wireless PCS, LLC (U 3060 C), AT&T Mobility Wireless Operations Holdings, Inc. (U 3021 C), and Santa Barbara Cellular Systems, Ltd. (U 3015 C)).

and economic development opportunities, business efficiencies, etc. that are widely recognized to result from such access.

If the program makes it too hard for providers to participate (in terms of application requirements and processes, reporting requirements, service and technical obligations, disclosure of proprietary/competitively sensitive information, etc.), providers will choose not to do so. This will ultimately delay, if not preclude, consumers in California who lack meaningful internet service (and who aren't likely to get it as a result of market forces or of other initiatives like the FCC's Connect America Fund ("CAF")) from getting such service, keeping the benefits of broadband out of their reach.

If, on the other hand, the Commission redesigns the CASF program in a manner that establishes effective incentives for getting internet service to the most unserved people at the lowest cost to the program; utilizes a reasonably simple application process; gives applicants certainty as to the expeditious time frame for granting decisions; allows providers to leverage existing products, systems, and processes (including those developed for CAF purposes, for CAF recipients); and has reasonable payment provisions and reporting requirements, more providers are likely to seek funding from the program, to the benefit of the people and communities that lack meaningful internet access today.

AT&T's proposal would achieve the redesign just described. It is based on and would complement the FCC's CAF and Connect America Fund II ("CAF II") programs, and includes the following key components:

One Annual Application Date. All applications for CASF funding should be due on a specified date once a year. This will enable providers to focus their resources and make the best proposals possible on that date and allow the Commission to evaluate all applications against one

another and as part of a single process. In turn, this will aid the Commission in ranking applications and drive efficiency in the program.

Definitive list of CASF-eligible census blocks. Prior to applications being due, the Commission should create a single definitive list of CASF-eligible census blocks, including which census blocks qualify as low-income and/or high-priority. This process would include an opportunity for providers to challenge the eligibility of census block(s). It also will make submitting and reviewing applications easier and faster, given that applicants and the Commission will know in advance that the designated census blocks are eligible for CASF funding.

Latency as a scoring criterion. Latency should be added to the scoring criteria for awarding a CASF grant because it significantly affects the customer experience of broadband service.

Exemption from certain application and reporting requirements. Applications with a per-household² cost below the thresholds listed by Staff in Section 1.7 of Appendix C should be exempted from certain application and reporting requirements. This should lead to more applications with low per-household costs, allowing the \$300 million allocated by the Legislature to go farther and benefit more consumers.

Annual Progress Reports. Progress reports should be due only on an annual basis in order to reduce administrative burdens and avoid unnecessary repetition from too-frequent reports.

Testing for Completion Reports. For completion reports at the end of a project, providers should be allowed to use either the speed testing methodology adopted by the FCC for CAF, which we understand the FCC will adopt prior to the July 24, 2018 CAF II Auction, or, until

² AT&T also proposes that “household” be defined to include both occupied and unoccupied housing units. Opening Comments of AT&T on Phase II Staff Proposal at 7-8 (Apr. 16, 2018) (“AT&T Phase II Comments”).

then, use their own speed tests. This would replace Staff’s proposed requirement to use the CalSPEED test, which tends to underreport speeds.

Monthly payments. Payments of 80% of the CASF funds awarded to an applicant should be dispensed in 30 monthly installments to ensure a steady flow of funding as work proceeds, with the final 20% of the funds being dispensed after the provider submits its completion report. This will create a stronger incentive to participate because providers will not have to self-finance projects for several months at a time when, but for the CASF funding, they would not have undertaken these types of projects in otherwise uneconomic areas.

AT&T responds to the various proposals of other commenters below. All comments considered, AT&T continues to believe that its proposed modifications to Staff’s proposal have the best chance of increasing voluntary provider participation in the CASF program and therefore are most likely to promote the Legislature’s goal of extending the availability of meaningful broadband service to unserved areas in California.

II. ARGUMENT

A. Amount Available for Grants (Appendix C, Section 1.2)

1. Level of Funding

AB 1665 authorizes the Commission to grant up to 100% funding for CASF Broadband Infrastructure Grant Account projects.³ In Section 1.2 of Appendix C, Staff proposes that 100% funding for total project costs be possible for low-income areas, with 80% funding available for other areas. Frontier opposes that limit,⁴ as does AT&T. AB 1665 does not restrict the availability of 100% funding to low-income areas only, and the Commission should not do so

³ AB 1665, § 3, Cal. Pub. Util. Code § 281(f)(13).

⁴ Comments of Citizens Telecommunications Co. of California, Inc., et al. at 2-4 (Apr. 16, 2018) (“Frontier Phase II Comments”).

either. Rather, the availability of 100% funding for any project should be determined on a case-by-case basis, with a liberal bent toward granting 100% funding. The higher likelihood of obtaining 100% funding will encourage more participation in the program, leading to more and faster deployment. Moreover, there may be areas that are not low-income but still require the incentive of 100% funding for providers to apply to serve them. As Frontier notes, there will never be a business case to invest in certain rural or high priority areas (not all of which are necessarily low-income) without the opportunity for the highest level of funding. Restricting the availability of 100% funding to low-income areas only would unduly skew applications toward low-income areas over all others, which would undermine the statutory goal of achieving at least 98% 10/1 coverage throughout all of the consortia areas.

ORA contends that 100% funding is “unreasonable” and that the Commission should require applicants to retain a financial stake in all projects.⁵ That proposal is inconsistent with AB 1665, which expressly authorizes the Commission to award up to 100% funding.⁶ That is a new development and signals the Legislature’s commitment to creating stronger incentives for private-sector providers to participate in the CASF program. ORA’s proposal would only undercut that incentive.⁷

⁵ Comments of the Office of Ratepayer Advocates on the Amended Scoping Memo and Ruling of the Assigned Commissioner Requesting Comments on the Implementation of Program Changes to the California Advanced Services Fund, at 4-5 (Apr. 16, 2018) (“ORA Phase II Comments”).

⁶ AB 1665, § 3, Cal. Pub. Util. Code § 281(f)(13).

⁷ As a fallback position, Frontier suggests that there could be a separate, initial application window for projects that seek 100% funding. Frontier Phase II Comments at 3. AT&T does not support that proposal, because AT&T recommends that all applications be considered each year as part of the annual process, and that all be at least considered for 100% funding.

The Central Coast Consortium proposes that funding levels be tied to proposed service speeds, so that a project with 10/1 service would receive just 28% funding.⁸ The Commission should reject that proposal. Nothing in AB 1665 supports tying the level of funding to the bandwidth speed of the project. To the contrary, the goal of the statute is to maximize the availability of at least 10/1 broadband service.⁹ Altering the funding priorities so that significantly more funding is given to projects with higher, and therefore more expensive to deploy, bandwidth speeds would undermine that goal by creating an incentive to propose projects that bring higher speeds (at higher costs) but cover fewer unserved locations. Moreover, as discussed below, 10/1 service provides capabilities that are more than sufficient to meet the broadband needs of a typical household, even with multiple simultaneous users.¹⁰ Every statute involves trade-offs in search of achieving a specific goal, and the CASF program should create incentives aligned with the goal of AB 1665. Because the goal of AB 1665 is not to maximize deployment at the highest speeds, but rather to promote very broad deployment at speeds of at least 10/1, CASF funding should be apportioned consistently with that goal.

2. Middle-Mile Projects

Section 1.2 of Appendix C states that, when an application requests funding for middle-mile infrastructure, the applicant must show that the middle-mile infrastructure is “indispensable” for accessing the last-mile infrastructure. CCTA argues that “indispensable” should be interpreted to mean that there is no other middle-mile service provider willing to serve

⁸ Comments of the Central Coast Broadband Consortium on Phase II Staff Proposal, at 6 (Apr. 16, 2018) (“Central Coast Consortium Phase II Comments”).

⁹ AB 1665, § 3, Cal. Pub. Util. Code § 281(b)(1)(A).

¹⁰ *See infra*, part II.K.

or capable of serving the project area.¹¹ The Commission should reject that proposal, for it assumes that the CASF applicant would be willing to or able to rely on a different provider's middle-mile facilities. A provider should not be forced to rely on renting facilities from others when the provider is committing to offer broadband service at certain speeds, because such reliance lessens control over the service by inserting a middleman between the provider's last-mile facilities and cloud facilities. No CASF applicant should be forced to rely on other providers' middle-mile transport, just as those providers are not required to "unbundle" and lease access to those facilities to CASF applicants.¹²

The Rural Policy Group seems to recognize the problems of such forced access and forced rental when it recommends that "indispensable" be interpreted to mean that existing middle-mile infrastructure is either unavailable due to the owner's refusal to provide legally binding access to the infrastructure, or is unaffordable as determined by objective standards.¹³ That proposal at least acknowledges for the difficulties of effectively forcing applicants to rely on other entities' middle-mile infrastructure. But it does not go far enough, because it still would force the Commission to determine in each instance whether the middle-mile infrastructure owner had actually "refused" to provide access or had proposed rates that were "unaffordable." That would only lead to disputes

¹¹ Phase II Comments of the California Cable and Telecommunications Association, at 4-5 (Apr. 16, 2018) ("CCTA Phase II Comments").

¹² CCTA's approach also arguably would require a provider seeking funds for middle-mile infrastructure to show not only that there is no other middle-mile provider in the area, but also that there is no possibility that a different provider could have constructed middle-mile infrastructure for that area. That would unreasonably preclude viable projects from being funded based on what a different provider might be able to do.

¹³ Comments of the California Center for Rural Policy, Rural County Representatives of California, Upstate California Connect Consortium and the Northeastern California Connect Consortium on Phase II Issues, at 5 (Apr. 16, 2018) ("Rural Policy Group Phase II Comments").

and complexity, imposing extra burdens on the Commission and Staff to resolve what are effectively unbundling disputes in an area where there are no unbundling requirements.

The best approach, and the one AT&T supports, is that of the North Bay Consortium, which proposes that the Commission treat any middle-mile construction as “indispensable” to a last-mile project if it makes the applicant’s last-mile project feasible.¹⁴ Such an approach properly leaves it to providers to decide for themselves, on a business-to-business level, whether it makes sense for the applicant to lease access to middle-mile infrastructure from an existing provider, given all of the service, technological, and financial considerations, and other commitments and obligations that go along with a CASF-funded project. Providers are capable of determining between themselves whether and when it makes sense to enter into such sharing arrangements, and a business decision not to enter into such arrangements should not preclude an applicant from seeking middle-mile funding to make its last mile project feasible.

3. Pricing Obligations

In discussing Section 1.2, certain commenters propose that various types of pricing obligations be imposed on winning applicants. These proposals have no support in AB 1665, would deter voluntary participation in the program and are unnecessary.

ORA proposes that if the Commission gives a high level of funding for a low-income area it should require the applicant to provide a low-cost broadband service to low-income households. Specifically, ORA proposes that the applicant be required to offer a plan for \$14.99 with no

¹⁴ Comments of the North Bay North Coast Broadband Consortium (NBNCBC) on Assigned Commissioner's Amended Scoping Memo and Ruling Phase II, at 2 (Apr. 16, 2018) (“North Bay Consortium Phase II Comments”).

contract term and including a free modem or customer premises equipment.¹⁵ ORA contends that \$14.99 is the same as or close to the price for plans imposed by the Commission in merger cases.

This proposal has no support in the statute. Nothing in AB 1665 requires successful CASF applicants to provide service at Commission-imposed price levels or authorizes the Commission to regulate broadband prices. That makes perfect sense, because the purpose of AB 1665 is to promote the *availability* of broadband service to unserved areas. A mandatory low-price plan, by contrast, has nothing to do with promoting availability. Rather, the purpose of such plans presumably would be to increase *adoption* of broadband service, *i.e.*, subscribership. That is a separate policy goal and there are separate measures and programs designed to foster adoption of broadband service, such as the Broadband Adoption Account,¹⁶ and many factors other than price also drive adoption levels. Moreover, under Appendix C, CASF applicants already would be required to commit to a price for the first two years of service and the Commission apparently would take that pricing commitment into account in the scoring process while evaluating applications.¹⁷ That is sufficient without also forcing applicants to meet Commission-imposed price levels.¹⁸

The North Bay Consortium argues that CASF applicants should be required to provide broadband service for “reasonable monthly prices,” by which they mean the lowest price that the

¹⁵ ORA Phase II Comments at 4-5.

¹⁶ *See* Amended Scoping Memo, Appendix B.

¹⁷ Appendix C, §§ 1.6 (Item 10) and 1.14.

¹⁸ The Rural Policy Group makes a somewhat similar proposal, arguing that applicants receiving funds to serve low-income communities should be required to make an enforceable commitment that broadband service will be “affordable” as determined by an objective standard. Rural Policy Group Phase II Comments at 5. The Commission should reject that proposal for all the reasons stated in the text, and also because it is unduly vague (the “objective standard” is never defined) and would embroil the Staff or Commission in having to decide what qualifies as “affordable,” thereby engaging in a form of price regulation of broadband internet access service.

provider offers in all regions of California for any given individual service plan. Thus, for example, if a provider charges \$40 for a particular plan in one area and \$50 in another area, the price for that plan in an area funded by CASF would have to be \$40.¹⁹ The Commission should reject that proposal. Like ORA’s price-mandate proposal, this proposal has no support in AB 1665 and would again create a disincentive to participating in the program. And as noted above, each applicant will already need to have made a two-year price commitment in order to obtain CASF funding for a specific project area, which should be more than sufficient for the purpose of awarding funds to promote deployment.

The North Bay Consortium also proposes that there be data limitations for any individual service plans in CASF-funded project areas, starting at 190 gigabytes per month as the minimum.²⁰ To the extent any data caps are used, however, they should be consistent with those required by the FCC in the upcoming CAF II auction, which is 150 gigabytes per month for 10/1 internet service.²¹

B. Appendix C, § 1.3 – Definitions

1. Definition of an “Eligible Project”

Certain parties comment on Staff’s proposed definition of an “Eligible Project” and propose to modify that definition.

ORA suggests that “Eligible Project” should be defined to require all projects to serve a consortia area where less than 98% of households have access to broadband service, at least until all consortia areas meet the 98% goal.²² The Commission should not adopt that limitation. The

¹⁹ North Bay Consortium Phase II Comments at 6.

²⁰ *Id.* at 7.

²¹ <https://www.fcc.gov/auction/903#technology>.

²² ORA Phase II Comments at 7.

goal of AB 1665 is to make broadband service available to *at least* 98% of households in each consortia area,²³ but the Legislature did not oppose making broadband available to more than 98% of households. Some large consortia areas may have a large number of unserved households even after the consortia area has 98% coverage, and providers should be allowed to apply to serve such areas rather than forcing consumers in those areas to the back of the line. Under ORA's proposal, if a consortia area had reached 98% coverage, the final 2% of census blocks in that area would have to be excluded from the annual list of eligible census blocks, and there is no way of knowing how long consumers in those areas would remain ineligible for CASF help while waiting for every other area to reach 98%.

In addition, there are already other prioritization factors in Staff's proposal, such as for low-income and high-priority areas. Adding more priority levels is unnecessary. All unserved locations should remain eligible to be served by a willing provider regardless of whether a consortia area has reached 98% coverage.

ORA also asks the Commission to clarify what an "extension" of service within a CAF II area is, in order to define which census blocks are eligible for CASF funding.²⁴ Specifically, ORA recommends that a CAF II provider, when seeking CASF funds, be required to demonstrate that the area to which the provider seeks to extend coverage is "verifiably distinct and incremental to any deployment of broadband service supported by CAF II."²⁵ AT&T believes this is unnecessary because Staff's proposed definition of an eligible project is sufficient as it is, for it states that CAF II areas remain eligible for CASF funding to an existing facilities--based provider "to extend

²³ AB 1665, § 3, Cal. Pub. Util. Code § 281(b)(1)(A).

²⁴ ORA Phase II Comments at 7.

²⁵ *Id.* at 7-8.

service within its CAF II area.” That should address ORA’s concern, for a CAF II provider necessarily will have to show that its application is to extend service within the CAF II area, and such an extension necessarily will need to be distinct and incremental to any deployment of broadband service supported by CAF II.

ORA next asks the Commission to clarify what baseline data will be used to determine whether an area currently has 6/1 broadband service.²⁶ AT&T’s proposal, set forth in its Comments,²⁷ would provide that clarity. Under AT&T’s proposal, the Commission would establish a definitive list of CASF-eligible census blocks, initially by relying on a combination of Form 477 data, prior CASF grants, any CASF Right of First Refusal, census blocks awarded through the upcoming CAF II auction, and locations that providers identified as having 10/1 internet access pursuant to CAF, with a subsequent pre-application challenge process to refine the list of CASF-eligible census blocks before it is finalized each year.

Race Telecom suggests that an “Eligible Project” should be defined to include parts of a CAF II area where the CAF II provider has notified the Commission that it has completed its buildout of an area and those parts are not covered.²⁸ AT&T does not oppose that proposal, provided that it is understood not to impose any obligation on a CAF II provider to notify the Commission that it has completed its CAF deployment in a census block (*i.e.*, will not build any more in a census block using CAF funds). Issues regarding such notification to the Commission are discussed below regarding Section 1.10 of Appendix C.

²⁶ *Id.* at 8.

²⁷ AT&T Phase II Comments at 10.

²⁸ Comments of Race Telecommunications Inc. on Phase II Issues, at 4 (Apr. 16, 2018) (“Race Telecom Phase II Comments”).

The Rural Policy Group, like ORA, addresses how to determine whether households in a census block have 6/1 service, which is necessary to decide whether they are “unserved,” but its argument goes to the time of day when speed testing should be done. Specifically, the Rural Policy Group argues that speed testing should be done during high-peak periods.²⁹ AT&T strongly opposes that proposal, which is addressed in more detail below regarding Proposed Application Item 6.³⁰

The Rural Policy Group further proposes that applicants be required to provide broadband service that is at parity with the broadband service in areas *adjacent to* the project area.³¹ Nothing in AB 1665 supports that position. There could be many reasons why the level of broadband service in an area adjacent to a CASF project area is different than in the project area. Indeed, by definition, the CASF project area has characteristics that have prevented such investment. Moreover, if the service level in an adjacent area is significantly different than in the project area, the proposed requirement would drive up the cost of serving the project area because an applicant would have to seek funding sufficient to provide something more than 10/1 service, even though 10/1 service is all AB 1665 requires. In other words, an area could lose out on 10/1 service just because some “adjacent” area has 25/3 service. The Commission should not make a project area less desirable to apply for simply because, perhaps due to large census blocks or other factors, adjacent areas may have different levels of broadband service.

²⁹ Rural Policy Group Phase II Comments at 4.

³⁰ The Rural Policy Group also argues that outages above a “reasonable level” should be considered in determining whether an area is “unserved.” *Id.* at 5. That proposal has no support in AB 1665 and is not supported by any details about how outages would be measured, what level of outages is reasonable, etc. The Commission should therefore reject this proposal.

³¹ *Id.* at 4.

The Rural Policy Group also contends that the 98% coverage goal of AB 1665 is only for wireline access and that the Commission should not count wireless or satellite service toward meeting that goal.³² Nothing in AB 1665 supports excluding fixed wireless service or mobile service. The 98% coverage goal is for 10/1 or faster service, and the Commission is to take a technology-neutral approach toward achieving that goal.³³ Such an approach cannot exclude fixed wireless or mobile service, which undeniably is capable of providing robust 10/1 service.

Frontier seeks clarification on the reference to an “existing CASF project area” in the definition of “Eligible Project,” particularly whether that term applies to area covered by a pending application.³⁴ AT&T takes no position on that issue because under its proposal for an annual application and review process³⁵ there would be no such issue. Under AT&T’s proposal applications would be submitted and either granted or denied just once per year as part of a single annual cycle. As a result, there would never be a pending CASF application for a particular area when new applications were being submitted.

C. Eligible Applicants (Appendix C, § 1.4)

ORA asks the Commission to clarify how it will enforce CASF requirements for the retail sale of broadband service in cases where the grantee is a purely wholesale broadband provider, as might occur in cases of a small LEC that offers broadband pursuant to its CASF grant obligations through an affiliate.³⁶ ORA maintains that such affiliates should have to meet all CASF requirements. AT&T does not oppose the use of affiliates to provide retail service in a CASF

³² *Id.* at 3.

³³ AB 1665, § 3, § 3, Cal. Pub. Util. Code § 281(f)(1).

³⁴ Frontier Phase II Comments at 9-10.

³⁵ AT&T Phase II Comments at 17-19.

³⁶ ORA Phase II Comments at 8-9.

project area, and agrees that such retail affiliates should remain subject to applicable CASF retail rate requirements for the specific CASF-supported service that the retail affiliate offers.

CCTA contends that “facilities-based broadband provider” should be defined exactly as NTIA defines it.³⁷ Section 1.4 of Appendix C, however, already states that “[t]he Commission uses the [NTIA’s] definition of a facilities-based broadband provider[.]”

The Rural Policy Group asserts that Tribal governments should be eligible for CASF grants.³⁸ AT&T does not oppose that, provided that Tribal governments are subject to the same limitations on applications as local governments.

D. Appendix C, Section 1.6 – Information Required of Applicants

1. Proposed Application Item 3 – Description of Current Broadband Infrastructure

AT&T’s Comments recommended removing Staff’s proposed requirement to provide a description of competitors’ networks in a project area, noting that an applicant is unlikely to have or be able to get any specific information on competitors’ networks.³⁹ CCTA and the Rural Policy Group agree and likewise propose that the requirement be eliminated.⁴⁰

No party commented in support of the proposed requirement. CCTA, however, states that an applicant might be able to indicate whether it is able to interconnect with other providers in the project area.⁴¹ AT&T opposes requiring providers to address that point in their applications. For all the reasons discussed above opposing any requirement to use another provider’s middle-mile

³⁷ CCTA Phase II Comments at 3-4.

³⁸ Rural Policy Group Phase II Comments at 6.

³⁹ AT&T Phase II Comments at 12-13.

⁴⁰ CCTA Comments at 6; Rural Policy Group Phase II Comments at 6.

⁴¹ *Id.* at 6.

facilities, AT&T similarly opposes any requirement to investigate and report on the possibility of interconnecting with and using another carrier's middle-mile facilities.

2. Proposed Application Item 4 – Project Location Data

GeoLinks states that the Commission should give providers flexibility in describing the proposed locations of their equipment for a project because plans are likely to change during construction and providers should have the flexibility to make those changes.⁴² AT&T fully agrees that providers need flexibility to adapt and alter their plans during the construction process for a CASF-funded project. This is also true for CAF II-funded projects. Indeed, this is a key reason why the Commission should reject the proposals to require CAF II providers to submit ongoing reports about potential CAF II deployment, as discussed below regarding Section 1.10 of Appendix C.

3. Proposed Application Item 5 – Median Income

The Rural Policy Group, Race Telecom, and CETF all propose to change how the Commission would define the median income level in an area, which is the benchmark to determine whether an area qualifies as “low-income.”⁴³ AT&T takes no position on those proposals. The most important point of any income-related measure is that it be easy to determine so that the Commission can use it in establishing the definitive list of eligible low-income census blocks in advance of providers submitting their applications.⁴⁴

⁴² Opening Comments of California Internet, L.P. (V-7326-C) dba GeoLinks on Phase II of the February 14, 2018 Amended Scoping Memo and Assigned Commissioner's Ruling, at 2 (Apr. 16, 2018) (“GeoLinks Phase II Comments”).

⁴³ Rural Policy Group Phase II Comments at 6-7; Race Telecom Phase II Comments at 5-6; Comments of the California Emerging Technology Fund on Phase II Issues, at 12-13 (Apr. 16, 2018) (“CETF Phase II Comments”).

⁴⁴ See AT&T Phase II Comments at 9-11.

4. Proposed Application Item 6 – Project Eligibility

The Rural Policy Group argues that speed testing for purposes of determining the current bandwidth speed of broadband service to a census block should be done during high-peak periods.⁴⁵ AT&T strongly opposes that proposal. Residential customers tend to use their broadband service at all times of day. Speed testing only during high-peak periods is therefore misleading. Moreover, speed testing at high-peak times can cause significant congestion on the network because such testing tends to saturate the broadband links with traffic in order to accurately capture maximum speed, which can adversely affect consumers during the testing period. Of course, AT&T's proposal would eliminate the need for speed testing to determine the eligibility of a census block. As explained in its Comments, AT&T recommends determining whether 6/1 or 10/1 broadband service is available in a census block based on a combination of reported data and a challenge process.⁴⁶

5. Proposed Application Item 8 – Proposed Project Expenditures

Staff's Proposed Application Item 8 would require applicants to submit financial and cost data as well as equipment descriptions. CCTA states that any equipment descriptions should be kept confidential.⁴⁷ AT&T does not object to that, but the more important point regarding Item 8 is that, as proposed by AT&T in its opening Comments,⁴⁸ Item 8 should not apply to an applicant that proposes costs per household that are below the per-household levels identified by Staff in discussing low-income areas in Section 1.7 of Appendix C. The empirical cost-per-household levels identified in Staff's proposal are presumptively reasonable. Applicants that propose costs

⁴⁵ Rural Policy Group Phase II Comments at 4.

⁴⁶ AT&T Phase II Comments at 10.

⁴⁷ CCTA Phase II Comments at 7.

⁴⁸ AT&T Phase II Comments at 15.

below those levels should be exempt from submitting the data required by Proposed Application Items 8, 14, and 15 as well as certain reporting requirements.⁴⁹ The ability to avoid such time-consuming and costly administrative burdens will give applicants a strong incentive to propose costs below Staff's per-household levels, thus benefitting consumers and the CASF program.

6. Proposed Application Item 9 – Performance Bond

AT&T's Comments proposed eliminating the performance bond requirement or, at a minimum, giving applicants the option to use a letter of credit.⁵⁰ CCTA, Race Telecom, the Rural Policy Group, and CETF all agree that the performance bond requirement should at least be softened by exempting entities with certain credentials, such as holding a CPCN or WIR (or DIVCA franchise) or having operated a broadband system for at least three years.⁵¹ While it would prefer to eliminate the performance band requirement entirely, AT&T supports any and all of those exemptions from the performance bond requirement, and likewise supports CCTA's recommendations that the Commission give applicants the alternative of providing an irrevocable letter of credit. ORA alone proposes keeping the performance bond requirement without adding exemptions for any types of entities or situations, but even ORA recognizes that the Commission could drop the requirement as long it has other ways of ensuring applicants' financial viability.⁵²

⁴⁹ See AT&T Phase II Comments at 15, 17.

⁵⁰ AT&T Phase II Comments at 15-16.

⁵¹ CCTA Phase II Comments at 7-8; Race Telecom Phase II Comments at 5; Rural Policy Group Phase II Comments at 7; CETF Phase II Comments at 5, 12; Opening Comments of The Utility Reform Network, and the Greenlining Institute on Phase II of the February 14, 2018 Amended Scoping Memo and Assigned Commissioner's Ruling, at 12-14 (Apr. 16, 2018) ("TURN Phase II Comments").

⁵² ORA Phase II Comments at 9-10.

The types of exemption criteria proposed by the other commenters would do just that, which should satisfy ORA's concern.

7. Proposed Application Item 10 – Pricing Commitment

CCTA recommends that the two-year pricing commitment under Item 10 be limited to applicants that will provide service in California only in the project area using CASF funds.⁵³

AT&T supports that modification. Other commenters proposed various pricing requirements that are addressed above in the discussion of Section 1.2 of Appendix C.

8. Proposed Application Item 15 – Project Viability

Frontier argues that the requirements to show project viability in an application should not be overly burdensome, and that the best indicator that a project is not viable unless it gets full CASF funding is the lack of any other providers having sought to employ broadband infrastructure in the project area.⁵⁴ AT&T agrees. In fact, as explained in its comments, AT&T would take it a step further. Under AT&T's proposal, as long as an applicant proposes costs-per-household that are below the levels stated by Staff in Section 1.7 of Appendix C, the applicant should not have to submit project viability information at all.⁵⁵ Removing that requirement would reduce burdens on applicants, creating a greater incentive to submit applications with costs below Staff's listed empirical levels. (AT&T also agrees with Frontier that, in the case of applications that still would require project viability information, such information should be given full confidentiality protection.)

⁵³ CCTA Phase II Comments at 8.

⁵⁴ Frontier Phase II Comments at 10.

⁵⁵ See AT&T Phase II Comments at 17.

E. Low-Income Communities – Expedited Ministerial Review (Appendix C, § 1.7)

Staff proposes an expedited ministerial review process for applications that contain low-income areas and meet certain other criteria, including that the cost-per-household falls below certain levels for certain technologies. Several parties commented on the use of an expedited ministerial review process and on the cost-per-household figures.

1. Use of an Expedited Ministerial Review Process

As stated in its Comments, AT&T opposes the use of a special ministerial review process for applications to serve low-income areas. Rather, all proposed project areas and applications should be evaluated at the same time and using the same criteria.⁵⁶ To the extent the Commission wants to prioritize applications for low-income areas, it can do so by, as Staff proposes, awarding extra points to applications to serve such areas.⁵⁷ By contrast, having multiple application review processes would only lead to undue complexity and likely slow down the overall funding process. Frontier likewise opposes the use of a ministerial review process for low-income areas, noting that there is no basis in AB 1665 for such a separate process.⁵⁸ CCTA agrees, adding that such a ministerial review process could undermine due process, limit stakeholder input, constitute an impermissible delegation of authority to Staff, and unlawfully remove the opportunity for challenges to an application.⁵⁹ ORA also opposes the ministerial review process, albeit for different reasons.⁶⁰

⁵⁶ AT&T Phase II Comments at 17-19 and Attachment 1.

⁵⁷ The North Bay Consortium likewise supports using points in the scoring process as the way to encourage applications for low-income areas. North Bay Consortium Phase II Comments at 2.

⁵⁸ Frontier Phase II Comments at 5.

⁵⁹ CCTA Phase II Comments at 9.

⁶⁰ ORA Phase II Comments at 10.

A few commenters support the ministerial process and would seek to expand it to cover either any application⁶¹ or any application to serve a “disadvantaged” community.⁶² AT&T opposes those proposals for all the reasons stated in its Comments. Rather, AT&T supports Staff’s recommendation for a single annual application process and maintains that the process should apply to any and all CASF applications regarding the Broadband Infrastructure Grant Account. CETF’s proposal to have an expedited ministerial review process for any application to serve a “disadvantaged” area is too vague and not specifically tied to anything in AB 1665, and relies solely on how the CETF Annual Survey characterizes different communities. For example, CETF would have an expedited process apply to “underconnected” communities, but that is not a term defined in AB 1665 or Appendix C, and clearly would be designed to expand coverage beyond the “unserved” consumers that are the focus of AB 1665.

2. Cost Per Household

While Staff proposed empirically derived cost-per-household levels as a tool for determining which applications for low-income areas may be eligible for expedited ministerial treatment, AT&T proposed that those cost levels instead be used to determine whether an application is exempt from certain other requirements.⁶³ The measure therefore remains important even if there is no ministerial review process for applications to serve low-income areas. A handful of commenters addressed Staff’s proposed cost-per-household figures.

ORA argues that instead of using the actual cost per household from prior CASF projects, the Commission should consider the amount of the *grant* per household in past awards, since the

⁶¹ Rural Policy Group Phase II Comments at 7-8.

⁶² CETF Phase II Comments at 5.

⁶³ Appendix C, § 1.7; AT&T Phase II Comments at 17.

amount of the typical grant was typically only about 60% of the total cost per household.⁶⁴ For example, ORA states, the average grant for the last-mile component of approved FTTH projects in the past was just \$7,430 per household, well below Staff's actual per-household cost figure for such projects.⁶⁵

The Commission should not adopt ORA's proposal. Prior grants were made under the Commission's prior matching rules, which obviously did not take account of the authorization in AB 1665 to fund up to 100% of project costs (which AT&T urges the Commission to apply liberally).⁶⁶ In addition, an important advantage of the empirically derived cost-per-household figures is that the focus on proposed costs (not past grant amounts) will drive applicants to propose lower per-household cost figures in order to avoid other regulatory burdens.

ORA's proposal, by contrast, would make it significantly more difficult to submit a proposal that comes under the cost-per-household thresholds that would exempt the applicant from other obligations. The effect would be to discourage voluntary provider participation in the program, impeding or preventing service deployment to unserved consumers. If the goal of the cost-per-household figures is to increase participation and incentivize low-cost applications, the thresholds should be kept at a level that will promote that goal.

CCTA, GeoLinks, and Frontier contend that Staff's cost-per-household figures unduly favor projects deploying new fiber to the home, because the cost figure for such projects is significantly higher than for projects that upgrade existing infrastructure or use fixed wireless technology. CCTA also contends that these figures are not technology-neutral.⁶⁷ GeoLinks

⁶⁴ ORA Phase II Comments at 11.

⁶⁵ *Id.*

⁶⁶ AB 1665, § 3, Cal. Pub. Util. Code § 281(f)(13).

⁶⁷ CCTA Phase II Comments at 9; GeoLinks Phase II Comments at 2-4; Frontier Phase II Comments at 5.

argues that in order to be technology-neutral there should be a single cost-per-household figure for all proposed projects.

Staff's cost-per-household figures, however, are based on actual past projects and therefore come from empirical data. None of these commenters proposes specific alternative threshold figures, much less figures based on empirical data. Nor are Staff's figures designed to favor one technology over another. There can be no dispute that projects using different technologies have different costs, and the purpose of the thresholds is to create an incentive for low-cost proposals. The only way to determine whether an application proposes reasonable costs is to compare it to typical projects of the same kind.

CETF takes a different approach than other commenters, arguing that if a cost-per-household figure is to be used, it should be at the highest end of the CASF program average, rather than in the middle.⁶⁸ AT&T California would not object to that proposal *as long as* providers proposing a cost-per-household below the threshold would, as AT&T California proposes, still be exempted from certain proposed application items.⁶⁹ If use of higher figures would in any way affect that exemption, then AT&T California would recommend using Staff's proposed cost-per-household figures.

Ultimately, AT&T agrees that the goal of the CASF program should be to get the most unserved locations served, to ensure that the most unserved locations get connected at the least cost to the program. This is why AT&T has recommended that the cost-per-household scoring criterion be worth the most points and that cost-per-household be used as a benchmark to relieve

⁶⁸ CETF Phase II Comments at 12-13.

⁶⁹ See AT&T Phase II Comments at 17.

applications of certain administrative obligations, to create the strongest incentive for providers to submit applications with the lowest per-household costs to the program.

F. High-Priority Areas – Request for Proposals and Ministerial Review (Appendix C, Section 1.8)

As explained in its Comments and immediately above, AT&T opposes any type of separate expedited ministerial review process for certain types of applications. To the extent the Commission wants to encourage and reward applications to serve high-priority areas, it can do so through the scoring process, as Staff already recommends.⁷⁰ Most of the comments on Section 1.8 address the proposed RFP process that would apply only if no private entity has submitted an application to serve a specific high-priority area.

TURN recommends that the Commission clarify how it will identify high-priority areas, and CCTA recommends that the Commission adopt clear, objective criteria to define those areas.⁷¹ AT&T agrees with those general concepts and the factors that TURN recommends be considered (though the use of “low-income” may be redundant, since a “low-income” area would already qualify for extra points in the scoring process). The ability to efficiently define and identify high-priority areas would be very important under AT&T’s proposal that the Commission develop a definitive list of CASF-eligible census blocks each year, including low-income and high-priority census blocks, prior to applications being submitted.

G. Right of First Refusal (Appendix C, Section 1.9)

The comments on the Right of First Refusal (“ROFR”) focused on how many extensions an incumbent carrier that has invoked its ROFR right should be able to get, and whether any penalty should apply to an incumbent that does not meet its buildout obligations.

⁷⁰ AT&T Phase II Comments at 18, 23; Appendix C, § 1.14.

⁷¹ TURN Phase II Comments at 4-5; CCTA Phase II Comments at 5.

1. ROFR Extensions

Various commenters contend that an incumbent that has invoked its ROFR right should only be able to receive one extension of the 180-day period to build out an area.⁷² That proposal is inconsistent with AB 1665 and should be rejected. AB 1665 puts no limit on the Commission's discretion to grant extensions it deems appropriate, which makes sense. A provider deploying facilities pursuant to a ROFR most likely is doing so at its own expense, saving CASF funds for use in other unserved areas. If the Commission finds that a provider is making progress toward completion but needs more time for actual completion, it would be appropriate for the Commission to grant the provider more time. On the other hand, if the Commission does not believe the provider is making progress toward completion, it can declare the area open to other providers to receive CASF funding. The proposal to never allow more than one ROFR extension would reduce the Commission's discretion and ability to work with providers to bring broadband to unserved areas in the most cost-efficient manner.

2. Penalties

Some commenters propose that there be penalties for an incumbent that invokes its ROFR right but then does not complete its buildout of an area because it does not finish deployment within 180 days of a duly granted extension. Such penalties would not be consistent with AB 1665, the legislation that adopted the ROFR provisions. Prior to passage of AB 1665, the Senate Committee on Energy, Utilities, and Communications raised the possibility of penalties against a provider for failing to build out its broadband network after exercising a ROFR.⁷³ However, the

⁷² ORA Phase II Comments at 12; Race Telecom Phase II Comments at 7; Rural Policy Group Phase II Comments at 8.

⁷³ *See, e.g.*, AB 1665 (Garcia), California Senate Committee on Energy, Utilities and Communications (Sen. Ben Hueso, Chair), Bill Analysis (7/12/2017 Version, as amended), p. 15 (Hearing dated Aug. 29,

Legislature did not adopt penalties when it passed the legislation. Rather, as its remedy for a ROFR provider that did not make progress towards completing deployment, the Legislature gave the Commission discretion to delineate the unserved area covered by the ROFR as eligible for other carriers to receive CASF funding to build in the area, basically rescinding the ROFR.

Penalties beyond that are not authorized by AB 1665.

H. Incentivizing Buildout in CAF II Areas and Notice to Commission of Buildout Status (Appendix C, § 1.10)

1. Reports on Deployment Plans

Several commenters address when and how they believe a provider that has received CAF II funding should report its progress and plans to the Commission. They ask the Commission to impose detailed reporting obligations on providers that have received CAF II funding, such as filing reports every six months that show not only where the provider has deployed broadband in its CAF II area, but also where it *intends* to deploy broadband in the future, even down to the household level, and to make those filings both under penalty of perjury and threat of additional penalties or fines if the provider does not build out to any location it said it intended to reach.⁷⁴

The Commission should reject these proposals. The FCC’s CAF II rules already provide strong incentives and penalties regarding timely completion of service availability obligations,⁷⁵ and carriers are required to report to the FCC if they are not making their milestones.⁷⁶ The

2017), available at: http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180AB1665.

⁷⁴ Race Telecom Phase II Comments at 3, 7-8; CETF Phase II Comments at 2-4, 9-10; Central Coast Consortium Phase II Comments at 6-7; Comments of Gold Country Broadband Consortium on Phase II Issues at 2 (Apr. 16, 2018) (“Gold Country Broadband Consortium Phase II Comments”); North Bay Consortium Phase II Comments at 10-11; ORA Phase II Comments at 13; Rural Policy Group Phase II Comments at 3-4.

⁷⁵ Frontier Phase II Comments at 8-9.

⁷⁶ 47 C.F.R. §§ 54.316 & 54.310.

Commission can monitor those reports. The Commission also can obtain access to the locations that CAF recipients are required to report in USAC's HUBB (High Cost Universal Broadband portal), which identifies locations to which the carrier has deployed broadband service pursuant to CAF.⁷⁷

Moreover, the proposals are unworkable and ignore the realities of the construction and planning process. The simple fact is that the plans of CAF II providers are likely to change and evolve over time. For example, it may turn out that sufficient backhaul service in an area is not available or is prohibitively expensive, or the area might have natural barriers (water, rocky areas, etc.) or other barriers (railroads, bridges, etc.) that make fiber placement more difficult or costly than expected. In most instances, therefore, the only time when a CAF II provider could be certain it would not deploy to a census block in its CAF II area would be when its time to build had expired. This is consistent with and allowed by the CAF II program. Faced with such uncertainty and changeability, providers should not be forced to choose between either prematurely abandoning their right to build in CAF II census blocks or stating that they intend to build and thus opening themselves to perjury charges and penalties if their construction plans change. In addition, CAF II providers have to meet certain coverage requirements (and are subject to significant penalties if they fail)⁷⁸ and therefore may need to retain census blocks until late in their CAF II service term in case they need to build out those blocks to meet the targets. Price-cap

⁷⁷ "Filing Geolocated Broadband Deployment Data," at <https://www.usac.org/hc/tools/hubb.aspx>. In addition, after the upcoming CAF II Auction closes, a winning long-form applicant must submit to the FCC a detailed description of its technology and system design in each applicable state, including enough detail to show that the network will support delivery of the required level of service to at least 95% of the required number of locations by the end of the six-year buildout period. Public Notice, *Connect America Fund Phase II Auction Scheduled for July 24, 2018 Notice and Filing Requirements and Other Procedures for Auction 903*, FCC 18-6, AU Docket No. 17-182 & WC Docket No. 10-90, 2018 WL 683803 (rel. Feb. 1, 2018) ("CAF II Auction 903 Public Notice").

⁷⁸ 47 C.F.R. § 54.320.

carriers that receive CAF II funding are not required by the CAF rules to specify the census blocks/locations to which they do or do not plan to deploy, much less to certify those plans every six months.

It also bears noting that the stated purpose of these commenters' reporting and penalty proposals is to ensure that the California Broadband Map stays updated and current. AT&T agrees with that general goal, but requiring CAF II providers to certify their *future* deployment plans (subject to penalties if the plans change) does not serve that goal. And in any event, AT&T's proposal for an annual application process with an annually updated definitive list of eligible census blocks will ensure that the CASF-eligible areas remain current.

2. Miscellaneous Proposals

The Rural Policy Group proposes that CASF funding be available for projects that go beyond a CAF II provider's commitments in an area.⁷⁹ AB 1665, however, already allows CASF funding to be awarded for a project that will expand coverage beyond that funded by CAF, such as extending coverage in a census block that will only partially be built out with CAF funds.⁸⁰ The Rural Policy Group's proposal, by contrast, would seem to allow CASF funding for a project that simply increases bandwidth speed in an area where deployment was already funded by CAF, such as where CAF funds were used for equipment to provide 10/1 service and an applicant now wants CASF funds to provide 25/3 service. That is contrary to the express requirements of AB 1665 (which identifies areas with $\leq 6/1$ – not $\leq 10/1$ – as eligible for support) as well as to the goal and purpose of AB 1665, which is to make 10/1 or better service available to as many unserved areas

⁷⁹ Rural Policy Group Phase II Comments at 8.

⁸⁰ AB 1665, § 3, Cal. Pub. Util. Code § 281(f)(5)(C)(i); Appendix C, § 1.3 (definition of Eligible Project).

as possible.⁸¹ Spending CASF funds to make 25/3 service available in an area that already has 10/1 service would undermine that goal by diverting money and applications away from other projects that would bring 10/1 to unserved areas.

CETF seeks to impose a new duty on CAF II providers to describe the process they use to evaluate how they might go beyond their specific application area to help achieve 98% deployment and why they concluded it was not feasible to achieve a larger impact. In other words, CETF would impose a special duty on CAF II providers alone to explain and justify why they did not propose a larger CASF project.⁸² That would serve no purpose. If the goal is to increase participation in CASF it makes no sense to impose added burdens on CAF II providers, which would discourage applications by treating such providers as a suspect class that must provide special justification for the scope of proposed projects.

I. Submission and Selection Timelines (Appendix C, § 1.11)

As discussed in its Comments, AT&T proposes that applications be submitted annually with a single application deadline each year for all applications.⁸³ AT&T also proposes a detailed timeline including each step in an annual application and approval process.⁸⁴ Various commenters propose different timelines, and some raise issues regarding the scoring process for applications.

1. Application Dates

Staff proposed an annual application process to replace the current use of rolling applications, with projects selected for funding prior to the next annual application due date.⁸⁵

⁸¹ AB 1665, § 3, Cal. Pub. Util. Code § 281(b)(1)(A) and (f)(5)(A).

⁸² CEFT Phase II Comments at 3, 9.

⁸³ AT&T Phase II Comments at 17, 19.

⁸⁴ *Id.* at Attachment 1.

⁸⁵ Appendix C, § 1.11.

AT&T firmly supports the use of a single annual application process, with the various modifications, refinements, and interim deadlines set forth in its Comments and Attachment 1 to those Comments. A simplified annual application and review process will drive efficiency in the program by requiring that all applications be evaluated and scored relative to one another (including on the important “Funds Requested Per Potential Household” criterion), ensure equal treatment of all applications, and should, all things considered, lead to more rapid review and grant of applications. ORA likewise supports using an annual application process and cycle.⁸⁶

Certain parties oppose an annual application process, but their arguments lack merit. Race Telecom contends that an annual application process would be too rigid and delay the deployment of broadband service to the public.⁸⁷ To the contrary, however, a structured annual process with interim due dates along the way, as well as use of a preapproved list of eligible census blocks, should simplify the process and allow for more rapid granting of applications than the current process, which sometimes can take years.⁸⁸ Adopting more structure will not make the process too rigid, but rather will ensure that it keeps moving along and that each year a group of applications will be granted for which broadband deployment can begin.

The Rural Policy Group and CETF contend that an annual application process is too restrictive and will lead to rushed applications, and that Staff should be able to tell applicants to revise and resubmit applications on the basis.⁸⁹ But it seems highly unlikely that an annual application process would lead to rushed applications. All potential applicants would know the fixed due date each year and can plan to be ready to apply on that date. Applicants that are serious

⁸⁶ ORA Phase II Comments at 13.

⁸⁷ Race Telecom Phase II Comments at 8-9.

⁸⁸ See Appendix C. § 1.11.

⁸⁹ Rural Policy Group Phase II Comments at 11; CETF Phase II Comments at 5.

about seeking funding are unlikely to wait to the last minute to throw together a rushed application. Similarly, if the application requirements are simplified there should be no need for Staff to require applicants to revise and resubmit their applications.

GeoLinks proposes that there be two application dates each year, one every six months, to give small providers flexibility to time their applications in a way that aligns with their resource allocation plans.⁹⁰ AT&T does not support a twice-a-year process, which would burden Staff and the Commission (not to mention interested providers) with two challenge periods and two review periods. In addition, while construction planning processes may differ somewhat between small and large providers, it seems doubtful that having two application dates would result in many more applications per year than having a single date. Moreover, unless the Commission could rule on all such applications within 6 months of when they are submitted there would be a continuous overlap of unresolved applications still pending when new applications come in, even though those new applications might be for or overlapping areas. A single annual process, with all applications ruled on before the next application due date, would avoid that problem.

Certain commenters would retain the current rolling application process.⁹¹ A rolling process, however, makes it difficult or impossible to evaluate overlapping projects against one another. It also has not led to optimal levels of participation in the CASF program.

⁹⁰ GeoLinks Phase II Comments at 8-9.

⁹¹ Frontier Phase II Comments at 5-7; Race Telecom Phase II Comments at 8; CETF Phase II Comments at 5, 13.

2. Deadline to Grant Applications

Some commenters propose that the Commission set a 6-month deadline to decide on applications,⁹² while one proposes a 106-day deadline.⁹³ While all agree that the Commission needs to find a way to decide on applications much more quickly than in the past, AT&T's proposed 4-month period, which is made possible by establishing a list of pre-approved eligible census blocks, gives the Commission sufficient time to rule on applications within the context of an annual process.⁹⁴

J. Challenges to Applications (Appendix C, § 1.13)

Race Telecom states that challenges to applications should have to be made within 21 days, with no late challenges allowed.⁹⁵ AT&T agrees that no late challenges should be accepted, but would allow 60 days for challenges when establishing a definitive list of eligible census blocks, as discussed in AT&T's Comments. AT&T proposes that the Commission establish a definitive list of eligible census blocks before applications are submitted, and that challenges to the eligibility of any census blocks be dealt with as part of that up-front process, so as not to slow things down with debates about the eligibility of specific census blocks after applications are filed.⁹⁶ There are many advantages to having a definitive list of eligible census blocks established up front in terms of streamlining the rest of the process and in allowing for all challenges to be dealt with at once rather than on a rolling basis. AT&T's proposal also allows challenges to the

⁹² Race Telecom Phase II Comments at 8; CETF Phase II Comments at 3.

⁹³ Central Coast Consortium Phase II Comments at 4.

⁹⁴ AT&T Phase II Comments at 9-11 and Attachment 1.

⁹⁵ Race Telecom Phase II Comments at 8. *See also* CCTA Phase II Comments at 11; Central Coast Consortium Phase II Comments at 3.

⁹⁶ AT&T Phase II Comments at 9-11.

eligibility of census blocks, the results of which would be reflected in the final definitive list of CASF-eligible census blocks each year. Because applicants can apply only for eligible census blocks, the results of those challenges would necessarily factor into the Commission's evaluation of all applications.

K. Scoring Criteria and High-Priority Areas (Appendix C, § 1.14)

No commenter opposes use of the scoring system to evaluate applications and compare overlapping applications to one another. Yet a number of commenters make proposals that would directly or indirectly affect the scoring and ranking process.

1. "Preferences" Based on 25/3 Service or Other Factors

Some commenters propose giving "preference" to applications that seek to serve certain types of consumers or areas, or propose to provide perceived benefits other than deployment of equipment to provide 10/1 or better broadband service.⁹⁷ Staff's proposal, however, already accounts in the scoring process for giving preference to projects that would serve low-income areas or high-priority areas. "Preferences" other than those are inappropriate, not supported by AB 1665, and not tied to any specific proposed point value. Adding such "preferences" to the scoring process would make it unwieldy and unduly complicated, and awarding extra points for projects aimed at goals that go outside the goals of AB 1665 would be inappropriate. The same goes for proposals to consider certain types of applications before others⁹⁸ or to award points for subjective and difficult-to-quantify factors such as creative programs and community partnerships and collaboration.⁹⁹ Rather, as AT&T has proposed, the fairest and most effective way to address

⁹⁷ Rural Policy Group Phase II Comments at 3, 7-8; TURN Phase II Comments at 10; North Bay Consortium Phase II Comments at 5.

⁹⁸ Race Telecom Phase II Comments at 8.

⁹⁹ TURN Phase II Comments at 10; North Bay Consortium Phase II Comments at 5.

applications is to have all applications submitted on the same date and evaluated against one another on the same criteria.

The Rural Policy Group also says that applications should receive a “secondary preference” if they will improve service to an “underserved” community, which it defines as a community with connection speeds of less than 25/3 or at risk from natural disaster or lack of route diversity.¹⁰⁰ That proposal has no support in AB 1665, which focuses solely on “unserved” customers (who lack 6/1 internet or faster).¹⁰¹ Giving preferences to applications that also benefit alleged “underserved” communities falls outside Staff’s proposal to grant extra points to low-income or high-priority communities, and, in fact, would give preference to an application that would benefit areas that *already have 10/1 broadband service* but don’t yet have 25/3 service. That is inconsistent with both the express language of AB 1665 and the Legislature’s intent.¹⁰²

This issue requires further comment because of the various commenters that overestimate the importance of 25/3 speed to an average residential household. The FCC does not use 25/3 as the speed to define acceptable broadband service, or what qualifies as “broadband.” It is merely to identify a benchmark for “Advanced Telecommunications Capability” for reporting on deployment at a national level.¹⁰³ When it comes to meaningful internet connectivity speeds for

¹⁰⁰ Rural Policy Group Phase II Comments at 3, 8.

¹⁰¹ AB 1665, § 3; Cal. Pub. Util. Code § 281(b)(1).

¹⁰² The North Bay Consortium Phase II Comments (at 8) suggest that the California Broadband Map should be updated to reflect the parts of consortia areas that have been damaged by wildfires. That issue is one that can be addressed as part of the Commission developing a definitive list of eligible census blocks in advance of applications being submitted each year.

¹⁰³ See *In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 14-126, *2015 Broadband Progress Report and Notice of Inquiry on Immediate Action to Accelerate Deployment*, 30 FCC Rcd 1375, 61 Communications Reg. (P&F) 1563, FCC 15-10, ¶ 26 (rel. Feb. 4, 2015) (“2015 Broadband Progress Report”).

actual consumers, however, there is no one-size-fits-all answer. Rather, a consumer needs to consider how they (and their family) intend to use the internet, including how many devices will be connected and how many people in the home may be using the internet at the same time. Service at the 10/1 level provides ample capabilities for virtually all residential consumers and households. The FCC’s “Broadband Speed Guide” discusses minimum download speeds required for certain activities based on individual use.¹⁰⁴ Using those figures, a family with 10/1 service could, for example, simultaneously have:

- 1 user watching an HD-quality movie
- 1 user taking online education courses
- 1 user surfing the web, and
- All devices constantly syncing email, alerts, weather updates, software updates, etc.

Furthermore, that example assumes all the users are active on the internet 100% of the time, which is not the case in the real world. It also is important to remember that the average household has 2.58 members, and with that few users each person would have to be engaged in relatively high-bandwidth-demand activity, like HD video streaming, at the same time as the others before demand would approach 10 Mbps. Thus, 10/1 service provides robust capabilities for average families that will transform the online experience for Californians that have no or little internet access today.

Accordingly, in order to best ensure that the largest number of unserved Californians have access to meaningful broadband capabilities – including the 19% of rural areas in California that do not have 10/1 capability yet – the finite amount of government support dollars should be allocated to maximize the coverage of at least 10/1 service. Altering scoring or funding levels to

¹⁰⁴ <https://www.fcc.gov/reports-research/guides/broadband-speed-guide>

prioritize 25/3 service, by contrast, would skew providers' incentives and how they target their applications, and thus defeat that goal and lead to fewer consumers receiving 10/1 or better service.

On a similar note, the North Bay Consortium asks for clarification regarding how the Commission will award points for applications that propose variable speeds or variable prices for different areas.¹⁰⁵ AT&T agrees that would it be helpful to clarify these points. In particular, it would be helpful, as AT&T has proposed, to remove bandwidth speed as a point item in the scoring table, given that all eligible projects must commit to providing at least 10/1 speed. Awarding higher points for higher bandwidth speed would skew applicants' incentives in a way that could lead to fewer consumers receiving access to at least 10/1 broadband service.¹⁰⁶

2. Points Awarded for "Funds Requested Per Potential Household"

The Rural Policy Group proposes that the points available for "Funds Per Customer" should be reduced from 30 points to 25 points.¹⁰⁷ AT&T strongly opposes that position. The Requested Funds Per Household¹⁰⁸ has the single highest point value in Staff's proposed scoring table and should remain that way. The most objective way to compare applications to one another, and an important factor to consider when allocating what is ultimately a limited amount of funds, is how much money the applicant is requesting per customer. This is a sound measure of the efficiency of the proposed project and a sound way to gauge potential "bang for the buck" in

¹⁰⁵ North Bay Consortium Phase II Comments at 8; *see also* Race Telecom Phase II Comments at 4-5 (suggesting that extra points be awarded to projects proposing speeds faster than 10/1).

¹⁰⁶ AT&T Phase II Comments at 22.

¹⁰⁷ Rural Policy Group Phase II Comments at 9; *see also* North Bay Consortium Phase II Comments at 10-11 (this Consortium would reduce the value of Funds Per Customer from 30 points to just 20 points).

¹⁰⁸ AT&T's Comments recommended that the title be changed "Funds Requested Per Household," consistent with its recommendation to define "household" to include both occupied and unoccupied housing units. AT&T Phase II Comments at 7-9, 24.

CASF funding. Reducing the value of that criterion, especially when paired with the Rural Policy Group's other proposals to add points for subjective matters like community endorsement letters or whether a project meets a community's economic development needs, would create less of an incentive for applicants to come up with their best possible proposal for funds per customer.¹⁰⁹ This would be counterproductive to the Legislature's goal of getting at least 10/1 broadband to as many unserved areas as possible in the most efficient manner possible.

3. Miscellaneous Proposals

The North Bay Consortium proposes that "preference" be given to project areas where the existing infrastructure is "unsatisfactory," meaning areas with only first-generation DSL, mobile wireless, satellite, and most terrestrial fixed wireless.¹¹⁰ That proposal has no support in AB 1665, which already specifies the types of areas to be given "preference," *i.e.*, "unserved" households. Since virtually all areas are served by mobile wireless or satellite technology, this would mean that virtually all areas would receive a "preference," which would make the alleged preference meaningless.

CETF proposes that applications be submitted to "peer review panels" gathered from research institutions, higher education, and technology enterprises and organizations.¹¹¹ It is unclear how that process would work or whether it would take decision-making authority away from the Commission. In all cases it would certainly slow down the review and grant process by

¹⁰⁹ Frontier proposes that letters of community support not be worth 5 points, but rather only be considered as a factor in whether to grant full funding. Frontier Phase II Comments at 9. AT&T prefers Staff's proposal of awarding up to 5 points for such letters, since the lack of such letters should not be a reason to deny full funding to an application that is granted after consideration of all the relevant scoring criteria.

¹¹⁰ North Bay Consortium Phase II Comments at 2-4.

¹¹¹ CETF Phase II Comments at 4, 11.

injecting many competing viewpoints and preferences that have nothing to do with the established scoring table or the clear deployment priority of AB 1665.

L. Payment (Appendix C, § 1.18)

Race Telecom proposes that the Commission keep the current CASF payment system in place.¹¹² AT&T disagrees. As described in detail in AT&T's Comments, AT&T proposes a monthly payment system similar to that used by the FCC under CAF, with the final 6 months' worth of payments being held in reserve pending completion.¹¹³

III. LINE EXTENSION COSTS

Regarding the Line Extension Program, which is addressed in part 2 of Appendix C, some commenters argue that incumbent carriers that perform line extensions should be required to pay into the LDP account because the incumbents assume ownership of the associated facilities.¹¹⁴ The Commission should reject those proposals, which are inconsistent with AB 1665. AB 1665 provides that an "individual household or property owner" is eligible to apply for a grant to offset the costs of connecting the household or property to an existing or proposed facility-based broadband provider.¹¹⁵ The statute says nothing about requiring the facility-based provider to bear part of the cost of the line extension. Rather, such work is a service that companies typically charge for, which is why the line extension program was created to help low-income households. The fact that the line extension fund now exists should not be used to force providers to bear some of those costs.

¹¹² Race Telecom Phase II Comments at 9.

¹¹³ AT&T Phase II Comments at 33-34.

¹¹⁴ CETF Phase II Comments at 6; Gold Country Broadband Consortium Phase II Comments at 3.

¹¹⁵ AB 1665, § 3, Cal. Pub. Util. Code § 281(f)(6)(A).

