

**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 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)) ON THE ADMINISTRATIVE LAW JUDGE'S  
SEPTEMBER 5, 2018 RULING REQUESTING (1) COMMENTS ON THE  
ELIGIBILITY FOR AND PRIORITIZATION OF BROADBAND INFRASTRUCTURE  
FUNDS FROM THE CALIFORNIA ADVANCED SERVICES FUND, AND  
(2) REPLY COMMENTS ON THE ASSIGNED COMMISSIONER'S JULY 11, 2018  
RULING SETTING WORKSHOPS AND SEEKING  
COMMENT ON ELIGIBILITY FOR AND PRIORITIZATION OF  
BROADBAND INFRASTRUCTURE FUNDS FROM THE  
CALIFORNIA ADVANCED SERVICES FUND**

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AT&T<sup>1</sup> provides these Reply Comments in response to the comments filed on September 21, 2018<sup>2</sup> in response to the September 5, 2018 Administrative Law Judge’s Ruling (“September 5 Ruling”) and to the comments filed on August 8, 2018 in response to the Assigned Commissioner’s July 11, 2018 Ruling (“ACR” or “July 11 Ruling”).

## **I. INTRODUCTION**

As shown in previous comments, AT&T’s proposals recommend a common-sense process for awarding CASF Broadband Infrastructure funds that is simple, efficient, and promotes provider participation. Most notably, AT&T proposes a yearly process where the Commission creates a single definitive list of presumptively eligible census blocks, allows parties to challenge those designations, and then gives adequate time for applications to be filed and granted/denied. All in all, if adopted, AT&T’s proposals are intended to help promote provider participation in the CASF program as they create the most workable and efficient system for the distribution of funds. Ultimately, the goal of maximizing provider participation is to get robust internet service to the most people who lack it in the most efficient, effective, and expeditious manner possible.

Some of the comments on the September 5 Ruling seek to make receiving 100% funding very difficult and impose extra administrative burdens, especially on providers receiving CAF II support. Those proposals, as discussed below, would undermine the goals of AB 1665 rather

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<sup>1</sup> 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); 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).

<sup>2</sup> A note on citations. Comments filed on September 21 in response to the ALJ’s September 5, 2018 ruling will be cited as the “Sept. 21 Comments.” Comments on the July 11, 2018 ACR will be cited as “Comments on ACR.” Comments filed on April 16, 2018 and May 1, 2018 in response to Staff’s proposal attached to the Amended Scoping Memo will be cited as “Phase II Comments” and “Phase II Reply Comments.”

than promote them, since the lack of access to full funding and the administrative difficulties of the process may well be among the main reasons provider participation has not been as high in the past as it might have been.

Some of the commenters' proposals regarding the July 11 Ruling would unnecessarily complicate the CASF process with no added benefit. Those proposals should be rejected. For example, some commenters argue that the process proposed by AT&T should be completed bi-annually and/or that additional challenges should be permitted after applications are filed. But the process itself takes nearly a year to complete, and therefore doing it bi-annually would lead to overlapping proceedings and confusion over which census blocks are eligible. Moreover, since parties have the opportunity to challenge the presumptive list prior to applications being filed, there is no need to permit additional challenges after applications are filed. Doing so would eliminate the efficiencies AT&T's proposed process is intended to create.

Commenters also make proposals that would undermine the process by depending on irrelevant data and/or allowing disparate treatment among carriers. For example, some commenters would determine census block eligibility based on subscribership data, instead of availability, even though AB 1665 requires it to be based on availability and even though nearly all commenters agree that subscribership data is not an accurate measure of availability and would increase administrative burdens. Commenters also propose special obligations and/or reporting requirements for CAF II providers, but the Commission should not interfere with that federal program, especially when the FCC does not require the type of reporting proposed by commenters. Commenters similarly seek to increase burdens on providers that seek funding for a project that includes middle-mile infrastructure. But that is unnecessary, because providers

will not include middle-mile facilities in an application unless they reasonably believe such facilities are necessary.

## II. REPLY COMMENTS ON SEPTEMBER 5 ALJ RULING

### A. Eligibility for 100% Funding

- 1). *How should the Commission determine whether a CASF project application should be eligible for 100 percent funding?*
  - a. *How should the CPUC implement the funding level for a CASF infrastructure application pursuant to Pub. Util. Code Sec. 281(f)(13)<sup>3</sup>?*
    1. *How should the Commission define “location and Accessibility” of an area, as required in statute?*
    2. *How should the Commission define the “existence of communication facilities” that may be upgraded to deploy broadband?*
    3. *How extensively should an applicant be required to use communication facilities in order to receive credit for doing so under the funding criteria?*
    4. *What factor(s) would justify that a project makes a “significant contribution” to achieving the program goal? For example, if the application proposed to serve more than 300 households, would that be a “significant contribution”?*
  - b. *Should additional factors be included in this funding determination?*
    1. *For example, should the Commission provide additional funding for applications that serve low-income communities?*
    2. *Should other criteria previously raised in comments be included, such as unconnected public safety infrastructure? Please provide specific recommendations about objective and reasonable methods by which the CASF should implement these criteria.*

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<sup>3</sup> Cal. Pub. Util. § 281(f)(13): “(13) The commission may award grants to fund all or a portion of the project. The commission shall determine, on a case-by-case basis, the level of funding to be provided for a project and shall consider factors that include, but are not limited to, the location and accessibility of the area, the existence of communication facilities that may be upgraded to deploy broadband, and whether the project makes a significant contribution to achievement of the program goal.”

- c. *What are the appropriate values, expressed as points or percentages, for each potential factor in the CASF eligibility criteria?*
1. *Is it necessary for those percentages to add up to 100 provided there is a maximum funding level of 100 percent?*
  2. *Should there be the multiple paths to 100 percent funding? If so, what/how?*

The bottom-line question here is what makes a CASF application eligible for 100% funding. AT&T's position is that applications chosen for funding should presumptively receive 100% funding. Providers go through a careful and technical process before deciding to submit an application. They carefully determine the funding they will need for each project, knowing that they need to keep the requested amount of support per household low in order to have a chance of being selected (and thus not having wasted all their investigatory work) and that other applicants are competing with them for funding by doing the same. The competitive scoring process proposed by AT&T further winnows the field to the best applications. A program in which the Commission could give or is likely to give less than 100% funding for projects that survive these steps could, as a practical matter, lead to providers not choosing to invest the time and effort needed to participate in such an uncertain process.

The scoring process takes into account multiple factors and allows for a range of points to be awarded on each factor.<sup>4</sup> AT&T has further recommended that an applicant's requested CASF support per household be weighted most heavily in the application scoring process, with applications seeking the least support per household earning the most points for that criterion.<sup>5</sup> Making the funding requested the most heavily weighted factor should drive applicants to seek to

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<sup>4</sup> AT&T Phase II Comments at 24.

<sup>5</sup> *Id.* In AT&T's proposal, funding requested-per-household is worth 30 points and the next highest factor is worth 20 points.

be as efficient and cost-effective as possible in all aspects of the application and planning process, such as in deciding whether to build or lease middle-mile facilities and whether to use their own existing facilities, upgrade them, or deploy new ones. The scoring criteria also will drive how applicants scope their project area in terms of low-income households and high-priority areas and other matters.<sup>6</sup>

Another critical aspect of AT&T's proposal is that applicants that request per-household support amounts that are below the threshold levels proposed by Staff would be relieved of certain burdens in the application and reporting stages. This too creates a strong incentive to keep the per-household support amounts requested in an application low.<sup>7</sup> In this way, the CASF scoring process and award provide incentives for project applications that serve the deployment goal of the Broadband Infrastructure Account Fund in a cost-effective way. As noted in AT&T's September 21 Comments (at 3-4), the various factors listed in Section 281(f)(13) are accounted for in the scoring process.

Applications that succeed in this scoring will have proven their worthiness for 100% of the funding they request. And requiring that all applications be submitted by a single, annual application deadline will ensure that each application is ranked against all other applications. This rewards efficiency and cost-effectiveness. For that reason, AT&T proposes that the default funding level for a project that the Commission chooses to fund be 100% of the support requested. The statutory amendments in AB 1665 now expressly allow 100% funding<sup>8</sup> and the Commission should not hesitate to use it. As Frontier observes (at 4), the "key factor which has

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<sup>6</sup> *See id.*

<sup>7</sup> AT&T Phase II Comments at 17.

<sup>8</sup> Pub. Util. Code § 281(f)(13).

deterred providers from seeking grants for high-cost, unserved areas [is] the lack of availability of full funding.” After all, CASF funding is an incentive for broadband investment, and a central goal of AB 1665 is to promote new broadband deployment as quickly as possible.<sup>9</sup> If incentives are insufficient for expensive-to-serve areas, rational providers will not participate. Similarly, 100% funding of the amount requested should be the default presumption under CASF.

Various commenters seek to limit CASF funding to lower funding levels, with funding above 60% or 80% of amounts requested being contingent on meeting a range of special criteria or providing extensive information beyond the kind proposed in Staff’s Appendix C to the Amended Scoping Memo. For example, CETF proposes that the Commission, regional consortia, and other stakeholders develop a “preferred scenario” for each consortia region, along with a significantly more complex California Broadband Map, and determine funding based on how well they meet the relevant region’s “preferred scenario” based on a wide range of factors.<sup>10</sup> The Public Advocate’s Office (“PAO”) would have funding determined by reference to a completely different set of criteria and requirements.<sup>11</sup> These proposals have little in common with Staff’s original proposal for evaluating applications in Appendix C to the Amended Scoping Memo. In fact, such proposals would only make the application and review process much more complex, burdensome, and time-consuming—discouraging rather than encouraging provider participation—and thereby inhibiting the efficient, effective, and expeditious deployment of internet services to people who lack them.

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<sup>9</sup> Pub. Util. Code §§ 281(a)-281(b)(1)(A).

<sup>10</sup> CETF Sept. 21 Comments at 2-4.

<sup>11</sup> PAO Sept. 21 Comments at 1-4.

Simplifying the application and review process and making 100% funding of support amounts requested a default presumption could result in the \$300 million fund being spent more quickly. If support is distributed in a manner that rewards efficiency and effectiveness—as AT&T’s recommended framework would do—accelerated use of the fund is, frankly, a good thing, because it would be spent on areas that are, by definition, “unserved” today and may well remain unserved if CASF funds are not disbursed.

**B. Potential Requirement to Offer Affordable Broadband Service Plans as a Condition of CASF Funding**

- 2) *Should the Commission require CASF grantees to offer affordable broadband service plans as a condition of receiving CASF funding?*
  - a. *Should the CASF Program require CASF grantees to offer affordable broadband service plan(s) to receive CASF funding? If so describe the justification.*

*For example, a provider offering a national, affordable low-income plan would meet this requirement so long as the plan is available to customers in the CASF grant area.*

- b. *Should the Commission incentivize applicants to provide affordable plans though the funding determination required in Pub. Util. Code Sec. 281(f)(13)?*
- c. *What is an affordable monthly price? What other factors should the Commission consider?*
- d. *How should applications in low-income areas be eligible for 100% funding? For example, should the “Maximum Funding Level: 100%” table below be modified.*

The threshold question here is whether the Commission should “require CASF grantees to offer affordable broadband service plans as a condition of receiving CASF funding.” AT&T opposes any such requirement, as do the Central Coast Consortium, Frontier, the Small LECs,

and CCTA.<sup>12</sup> Such a requirement would be aimed at increasing *adoption* of broadband service, not *deployment*, and deployment is the goal of the Broadband Infrastructure Grant Account. AT&T supports well-designed and targeted broadband adoption programs. Subscriberhip (adoption), however, is a separate issue from broadband service availability, having different causes, and so requires different solutions from those that address broadband issues. Moreover, many factors may drive low adoption of broadband service; pricing is only one such factor. Others issues, such as relevance and digital literacy, affect subscriberhip, which a pricing requirement would not address.<sup>13</sup> There are other programs aimed at promoting broadband adoption, such as the CASF Broadband Adoption Account<sup>14</sup> and many providers already offer discounted broadband options on their own. Staff’s proposal in Appendix C of the Amended Scoping Memo already would require a two-year price freeze for service over CASF-funded infrastructure.<sup>15</sup> The Commission should rely on those offerings rather than conflate adoption and service availability incentives here.

Some commenters support imposing an affordable pricing requirement as a condition of receiving CASF funding.<sup>16</sup> Neither Public Utilities Code Section 281 nor its legislative history

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<sup>12</sup> AT&T Sept. 21 Comments at 5-6; Central Coast Consortium Sept. 21 Comments at 7-8; Frontier Sept. 21 Comments at 4; Small LECs’ Sept. 21 Comments at 3-4; CCTA Sept. 21 Comments at 3-4 (“The Commission cannot require CASF grantees to offer broadband service at a specific rate as a condition of receiving a CASF infrastructure grant for several reasons.”).

<sup>13</sup> Pub. Util. Code § 281(j)(5); *see* AT&T Reply Comments on ACR at 9.

<sup>14</sup> AT&T Reply Comments on ACR at 9.

<sup>15</sup> Amended Scoping Memo, Appendix C, Proposed Application Item 10.

<sup>16</sup> PAO Sept. 21 Comments at 5-6; GeoLinks Sept. 21 Comments at 5; Joint Consumers’ Sept. 21 Comments at 5-6 (arguing that having an affordable broadband plan should be a condition of receiving funding above the 60% baseline); CETF Sept. 21 Comments at 7-8 (arguing that incumbent providers be required to offer an affordable broadband plan as a condition of receiving funding, but that smaller independent ISPs should face no such requirement). CETF’s proposal is, of course, unreasonably discriminatory on its face.

supports, much less requires, a requirement to offer any kind of mandated pricing plan in order to be eligible for CASF funding for broadband infrastructure. Such a requirement would be a disincentive for provider participation in CASF, thereby undermining the goal of promoting broadband service availability to people who lack it.

### **C. Scoring Method versus Minimum Performance Standards**

- 3) *Should the Commission eliminate the current scoring criteria and replace it with a different evaluation process focused on eligibility, minimum performance standards and funding level determinations?*
  - a. *Should the Commission eliminate the Scoring Criteria used in the program and included in the Staff Proposal and replace it with minimum performance requirements. These requirements would include:*
    - *A commitment to serve all households in the proposed project area;*
    - *Speeds of at least 10 mbps downstream and 1 mbps upstream;*
    - *Latency of 100 ms or less;*
    - *If the project receives a categorical exemption under CEQA, it would be completed in 12 months or less and projects requiring additional CEQA/NEPA review must be completed within two years of the approval of those reviews;*
    - *Data caps, where used, exceed 190 GBs per month; and*
    - *The applicant offers an affordably priced plan (See Question 2).*
  - b. *Staff proposes to revise its previous Ministerial Review proposal so that the process for reviewing applications, including funding level determinations, is done in the manner outlined in the table below.*

The central question here is whether Staff should replace the scoring-based evaluation process with “a different evaluation process focused on eligibility, minimum performance standards and funding level determinations.”

As discussed above regarding 100% funding of requested support amounts, Staff's scoring process, as modified by AT&T, is a tool for evaluating and ranking applications in a way that rewards the efficiency and cost-effectiveness of the CASF program. It provides a way to both determine which projects meet AB 1665's basic eligibility requirements and which of those projects deserve the highest ranking when it comes to granting the application and awarding funding, taking into account the applications seeking the least program support per location. As Frontier notes, using the scoring process is consistent with AB 1665's goal of speeding deployment.<sup>17</sup> Because of its central role, the scoring process should remain in place, subject to the modifications AT&T has recommended.

Some of the proposed "minimum" requirements in the question above would be inappropriate even if made part of the scoring process. A 190 gigabyte data cap would not be consistent with data caps under CAF.<sup>18</sup> And a requirement to offer an "affordable" broadband plan would be improper for the reasons stated above. These facts likewise defeat PAO's proposal<sup>19</sup> that the factors listed in the question above be used to "augment" the scoring process proposed by Staff and AT&T.

#### **D. Potential Limit on Reimbursement of Administrative Expenses**

- 4) *Should the Commission limit a CASF grantee's Administrative Expenses to 15 percent of total project costs?*
  - c. *The Commission limits the reimbursements of service providers' claimed administrative expenses funded by California's universal service fund programs, including the High-Cost Fund Program and the California LifeLine Program. Should the CASF Program also limit the reimbursement of administrative expenses claimed by CASF grantees?*

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<sup>17</sup> Frontier Sept. 21 Comments at 5.

<sup>18</sup> See AT&T Phase II Reply Comments at 10.

<sup>19</sup> PAO Sept. 21 Comments at 7.

1. *How should the CASF Program define an administrative expense?*
2. *Should the reimbursement of administrative expenses claimed by CASF grantees be limited to 15% of the CASF-funded project?*

AT&T agrees with several commenters that the Commission should not put a cap on recovery of administrative expenses, especially an arbitrary one. As Joint Consumers explain, such a restriction would be burdensome and therefore could deter participation, and also might harm smaller companies.<sup>20</sup> The Small LECs agree.<sup>21</sup> And as Frontier notes, administrative expenses are legitimate expenses incurred as part of the overall CASF project.<sup>22</sup> There is no basis for relegating them to a different status, and applicants will already have strong incentives to keep overall costs low if AT&T's proposed scoring system is adopted.

## **E. CAF Providers and Satellite Broadband Service**

### **1. CAF Providers Seeking CASF Funds**

Part 5 of the September 5 Ruling first asks about CASF funding for census blocks where some households may be covered by CAF funds:

- 5) *How should the Commission treat CAF providers seeking CASF funds? How should the Commission treat satellite broadband service?*
  - a. *Pub. Util. Code Sec. 281(f)(13) and 281 (f)(5)(C)(i) prohibits spending and CASF funding in census block with Connect America Fund accepted locations, except, as noted in 281 (f)(5) (C)(ii), when the provider receiving Connect America Fund support applies to build beyond its CAF accepted locations. How should the Commission require applicants submitting applications under these circumstances separate CASF and CAF financing?*
    1. *For example, if a census block in an application contains ten households and three CAF accepted*

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<sup>20</sup> Joint Consumers' Sept. 21 Comments at 11.

<sup>21</sup> Small LECS' Sept. 21 Comments at 5.

<sup>22</sup> Frontier Sept. 21 Comments at 6.

*locations, should the Commission assume the CAF locations are households, and only fund the seven remaining households?*

AT&T does not object to separating CAF financing from CASF financing when a provider seeks to extend from a CAF II-funded area into an adjacent area by using CASF funds.<sup>23</sup> The commenters addressing this specific question appear to agree that there should be no overlap in funding and that funds should be allocated based on the relative percentage of households or locations being served under each program.<sup>24</sup>

A few commenters go beyond the question asked to address other matters related to CAF II providers or expansion of a CAF II area by using CASF funds. The JAO argues that a CAF II provider's expansion should have to cover all the remaining unserved households in a census block and should only be eligible for CASF funding for up to 85% of its projected costs.<sup>25</sup> There is no basis in AB 1665 for either requirement. Applicants seeking CASF funding to expand beyond their CAF II area should be treated no differently than any other CASF applicant in terms of the area for which they seek funding and their eligibility for up to 100% funding.

GeoLinks argues that CAF II providers should be penalized based on how long they "waited" before deciding they would not build to a particular CAF II area by imposing a "waiting period" before the CAF II provider could apply for CASF funding to expand beyond the CAF II area where it built.<sup>26</sup> Again, however, there is no basis for that in AB 1665, and such a requirement would diminish a CAF II provider's statutory right to seek CASF funding to

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<sup>23</sup> AT&T Sept. 21 Comments at 10.

<sup>24</sup> Frontier Sept. 21 Comments at 7; CCTA Sept. 21 Comments at 7.

<sup>25</sup> JAO Sept. 21 Comments at 9.

<sup>26</sup> GeoLinks Sept. 21 Comments at 11.

expand beyond its CAF II area.<sup>27</sup> The FCC does not require CAF II providers to identify in advance where they will deploy, and there is no justification for “punishing” CAF II providers simply because of the nature of CAF II construction plans and obligations, which is that plans can change at any time and it is very difficult to know which area may or may not be built out far in advance of the 2020 reporting date under AB 1665.<sup>28</sup> As a practical matter, of course, GeoLinks’ proposal would not work with AT&T’s proposed CASF process, which allows applications to be submitted on an annual basis rather than a constant rolling basis.

With regard to both the GeoLinks and JAO proposals, and any other proposals seeking to impose early reporting requirements or a duty to hand over confidential deployment plans, it is important to remember that the goal is to “incentivize” CAF II providers to build beyond their CAF II areas.<sup>29</sup> Penalties and reporting duties have the opposite effect.

## **2. Satellite Providers**

- b. How should the Commission treat satellite providers receiving CAF support?*
  - 1. Is a satellite provider an “existing facility-based provider,” as that term is used in Pub. Util. Code Sec. 281 (f)(5)(C)(ii)? (Note this is particularly important because the FCC recently awarded CAF funding to a satellite provider.)*
  - 2. If a satellite provider is an existing facility-based provider, should the Commission revise CASF rule to include satellite service in the definition of a served area? (Note that currently, an area served by satellite is considered served only if that service was provided through a CASF grant.)*

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<sup>27</sup> Pub. Util Code § 281(f)(5)(C)(ii).

<sup>28</sup> AT&T Phase II Reply Comments at 26-28.

<sup>29</sup> Amended Scoping Memo, Appendix C, §1.10.

Of the parties addressing this issue, most support keeping the current CASF rule that excludes satellite service when deciding whether an area is “served” for CASF purposes.<sup>30</sup> As AT&T noted in its comments filed September 21, 2018, if satellite service is counted, virtually every census block would be deemed “served” by 6/1 and therefore ineligible for Broadband Infrastructure Fund. And in the context of CAF support, the existence of satellite broadband has not resulted in disqualifying any area from being eligible for CAF support.

#### **F. Information to Include in Project Summaries**

- 6) *Should the Commission require additional information in project summaries?*

*In addition to current requirements, Staff proposes that the Commission require applicants to include the following items in Application Item 1 – Project Summary:*

- *Identify main major infrastructure: miles of planned fiber, Central Offices used, number of remote terminals/fiber huts/wireless towers to be built, and if an IRU is used;*
- *Identify major equipment expenses (e.g., number of DSLAMs, multiplexers, etc.);*
- *Estimated breakdown of aerial and underground installation and if the poles or conduits are already in place; and*
- *Estimated construction timeline.*

AT&T, like most commenters, agrees that no items should be added to “Application Item 1 — Project Summary.”<sup>31</sup> As AT&T stated in its September 21 Comments (at 12), most of the information listed above is either already required and, as the Central Coast Consortium observes, much is confidential and would require special protections.<sup>32</sup> Because one role of

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<sup>30</sup> Frontier September 21 Comments at 7; CCTA September 21 Comments at 7.

<sup>31</sup> Central Coast Consortium September 21 Comments at 15-16; Joint Consumers September 21 Comments at 13; Frontier September 21 Comments at 8; CCTA September 21 Comments at 7-8. Conifer is the only party that proposes (at 7) to add significant new information requirements for Application Item 1. Yet Conifer provides no rationale or explanation for imposing such significant burdens or what gains they would achieve.

<sup>32</sup> Central Coast Sept. 21 Comments at 15-16.

CASF applications is to provide information for others to decide whether to challenge an application, it helps to use only public data.<sup>33</sup> Adding requirements to the application process would add more burdens and complexity to an already time-consuming process, and would provide no clear added value.<sup>34</sup>

### **III. REPLY TO AUGUST 8 COMMENTS ON JULY 11 RULING**

#### **A. Eligibility and Challenge Process**

##### **1. Test for Eligibility of a Census Block**

The Commission is required to determine a census block's eligibility for CASF funding based on availability, not subscribership.<sup>35</sup> Public Utilities Code § 281(f)(5)(A) provides that a project is eligible to receive funding if the project employs infrastructure capable of providing internet access at speeds of 10 Mbps downstream/1 mbps upstream (10/1) to “unserved households in census blocks where no provider *offers access* at speeds of at least” 6 Mbps downstream and 1 Mbps upstream (6/1). (Emphasis added). Moreover, using availability rather than subscribership is consistent with the statutory purpose of the Broadband Infrastructure Grant Account, *i.e.*, to “encourage *deployment* of high-quality advanced communications services to all Californians” and to “approve funding for infrastructure projects that will provide broadband *access* to no less than 98 percent of California households in each consortia region.”<sup>36</sup>

Even putting aside the law, there are good reasons to base census block eligibility on availability instead of subscribership. *First*, basing eligibility on a certain subscription rate would likely overestimate the number of census blocks that lack access to 6/1 or better service,

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<sup>33</sup> CCTA Sept. 21 Comments at 8.

<sup>34</sup> Frontier Sept. 21 Comments at 8; Small LECs' Sept. 21 Comments at 6.

<sup>35</sup> Joint Consumers' Comments on ACR at 3-4, see GeoLinks Comments on ACR at 3.

<sup>36</sup> Pub. Util. Code § 281(a)-(b) (emphasis added).

leading to dollars being spent in areas that do not need support.<sup>37</sup> *Second*, using availability is straightforward and administratively efficient, while using subscribership data would entail a time-consuming and unnecessarily burdensome process due to the granularity and the amount of data needed. *Third*, concern that some census blocks may have internet service available in only a portion of the area is being addressed at a national level, and improvement to the mapping of internet service availability should be accomplished in that proceeding.<sup>38</sup>

Most of the parties agree that using subscribership data is contrary to the statute and/or problematic. CCTA (at 3) states that the subscribership proposals are “[n]ot only . . . unlawful, but they would also necessarily lead to overbuilding of networks, which the legislature explicitly prohibited.” Frontier (at 3) points out that “Section 281 clearly states that the determinant of a proposed project area’s eligibility is what service an existing provider already ‘offers,’ not how many customers subscribe to that service offering.” CETF (at 4-5) “opposes the proposal to use subscription as a proxy for unserved areas,” stating that it “foresees sticky and difficult issues with” using “the amount of subscription . . . as a proxy for whether there is infrastructure access to broadband service,” including that subscribership “is not in any way an accurate indicator of lack [of] access to infrastructure.” In CETF’s view (at 4), “a subscription proxy is not in any way an accurate indicator of lack of access to infrastructure.” Race (at 3) likewise admits that using subscribership data may not be accurate and “could just end up being a nightmare of

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<sup>37</sup> The Office of Ratepayer Advocates (“ORA”) (at 3-4) agrees that overstating CASF eligibility “will likely increase the number of challenges to CASF applications, which may result in an inefficient approval process,” “will shift program resources, focus, and funds away from the areas most in need,” and “extends the list of potential project areas, which decreases the likelihood that an applicant will propose to serve a priority area, thus perpetuating the digital divide for areas that are most in need.”

<sup>38</sup> AT&T Comments on ACR at 5.

challenges for the CASF applicant who applies in good faith for what is represented to be an eligible CASF area after doing all the engineering work for a project.”

The parties requesting that the Commission use subscribership data to determine CASF eligibility (Joint Consumers and GeoLinks)<sup>39</sup> fail to explain how that approach could be reconciled with the statute’s plain language requiring the use of availability. Moreover, regardless of any concern Joint Consumers and GeoLinks may have about the current reporting process, they have not submitted any evidence that using subscribership data is more reliable.<sup>40</sup> And as noted in AT&T’s August 8 Comments (at 5), this issue will be addressed at a national level.<sup>41</sup> As most parties agree, there is no direct correlation between low subscribership and lack of availability, and equating subscription rates with availability would overestimate the number of census blocks that lack access to 6/1 or better service. Using subscribership data complicates the process, adding time-consuming and unnecessarily burdensome tasks, with no promise of providing more accurate data—the result of which will be to discourage participation in the program.<sup>42</sup>

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<sup>39</sup> See Joint Consumers’ Comments on ACR at 3-4; GeoLinks Comments on ACR at 2-3.

<sup>40</sup> GeoLinks (at 4) argues that AT&T’s definitive list proposal might lead to providing grants “where broadband becomes available after the creation of the list OR could lead to disincentivizing independent network investment in areas that are CASF eligible.” But that seems unlikely given that the reason the eligible areas are not served is that no carrier so far has seen an economic case for doing so. AT&T’s proposal is meant to create an overall efficient, streamlined process, even if it means that the definitive list will not be continuously updated.

<sup>41</sup> As part of the push to rely on subscription data, Joint Consumers (at 2) complain that Form 477 data is not useful to tell whether a census block is currently served. As explained in AT&T’s April 16 comments (at 4), however, AT&T proposes to use Form 477 data as a starting point, along with various other types of data to provide a complete picture.

<sup>42</sup> GeoLinks (at 3) argues that using a 40% subscribership threshold “may be useful in incentivizing existing service providers to improve their service offerings if they sense a threat of subsidized competition.” That argument misses the point, because the goal of the statute is to promote the deployment of services to unserved areas, not to address competition in served areas.

Some commenters propose that the Commission determine eligibility for CASF grants by using a geographic area smaller than or different than a census block.<sup>43</sup> Again, that proposal would add complexity with no corresponding benefit. As previously discussed, the more time-consuming and burdensome the process for awarding and administering CASF grants, the less likely providers will be to participate in the program. Moreover, the FCC uses census blocks as the relevant geographic area when administering its CAF II program and it therefore makes sense to do the same here, to ensure that CASF funding is directed to geographic areas that complement the CAF, not to those that duplicate CAF-supported areas. The FCC CAF II program has high voluntary provider participation and developing a system that resembles the FCC system likewise should promote participation in the CASF program.

## **2. AT&T's List Proposal and the Challenge Process for CASF Applications**

AT&T proposes that the Commission create a single, definitive list of CASF-eligible census blocks in advance of the deadline for submitting applications each year so that interested parties can rely on the list in preparing applications.<sup>44</sup> Specifically, as shown in Attachment 1 to AT&T's Opening Comments, filed April 16, 2018, the Commission would publish a list of presumptively eligible census blocks. Parties would have 60 days to file challenges (to add or remove a census block or to exercise a right of first refusal). The Commission would file a final list 60 days later. Parties would then have 90 days to file applications, and applications would be granted or denied 120 days later. The yearly process would then start anew. Creating a definitive list would simplify the process of preparing applications and evaluating applications.

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<sup>43</sup> CETF Comments on ACR at 4-5; Race Comments on ACR at 2; *see also* North Bay North Coast Consortium Comments on ACR at 3 (proposing use of geographic shapes that are uniform in size, rather than census blocks).

<sup>44</sup> AT&T Phase II Comments at 9-11; AT&T Phase II Reply Comments at 3.

It also should promote provider participation since applicants would have certainty that areas for which they seek funding are, in fact, eligible, without fear of a challenge.<sup>45</sup>

The commenters do not assert any strenuous objection to AT&T's proposal. They do propose various modifications or additions, but these either would not improve the process or might undermine the process. For example, GeoLinks (3-4) "sees value" in creating a definitive list, yet proposes a bi-annual application process and proposes that the list of eligible census blocks be updated more than once a year. But compressing the process to squeeze in two application rounds per year would add administrative burden and expense for applicants, challengers, and Staff without any corresponding benefit. As shown above, under AT&T's proposal the process for creating the list of eligible census blocks and ultimately approving applications can reasonably take nearly a year.<sup>46</sup> If all the intervals in this process were halved so that it could be completed twice a year, it is unlikely that applications and challenges would be as complete as they should be or that Staff would have sufficient resources to fully evaluate each project.<sup>47</sup>

CCTA (at 5) does not oppose creating a definitive list of eligible census blocks, but argues that parties still must be permitted to challenge an application "to account for changes within the census block." Permitting a second challenge after parties have been given the opportunity to challenge the Commission's list of presumptively eligible census would eliminate

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<sup>45</sup> AT&T Phase II Reply Comments at 32. The North Bay North Coast Consortium (at 4) says that availability of 6/1 or better service in an area should be determined by local information rather than Form 477 data. AT&T's proposal, however, would use both Form 477 data as a starting point, together with a variety of other data to provide a more complete picture. AT&T Phase II Comments at 5.

<sup>46</sup> AT&T Phase II Comments, Att. 1.

<sup>47</sup> Joint Consumers argue (at 8) that AT&T's proposal would be acceptable so long as two conditions relating to deadlines/timelines are met. As shown in Attachment 1 to AT&T's Phase II comments, AT&T's proposed process allows for these things.

the efficiencies that the creation of a definitive list is intended to create. There would be no benefit to allowing carriers to challenge an application including a particular census block a few months after that census block could have been or was challenged as part of developing the Commission's presumptive list. Doing so would not only waste resources, it would re-introduce the uncertainty that this process was intended to eliminate, thereby discouraging participation in the program. Getting a second bite at the apple could also encourage service providers not to participate in the process to challenge the list of presumptively eligible census blocks and, instead, to postpone their challenge until an applicant has already spent time and resources to plan, prepare and submit an application. That again would waste resources.

CETF (at 6) finds AT&T's proposal "acceptable," but only if the Commission requires, as a condition of receiving funds, "detailed verified reporting of construction plans under the CAF II program" every six months. Race similarly claims that creating a definitive list "would only be worth doing if the CAF II providers" release information on the areas they intend to build out and those they do not intend to build out.<sup>48</sup> But those proposals ignore the facts. As explained in previous comments, the plans of CAF II providers may well change and evolve over time.<sup>49</sup> The FCC recognizes this and does not require participating providers to identify in advance where they will deploy. Rather, they identify the locations in eligible census blocks to which they have deployed and/or are maintaining internet access pursuant to CAF *after the fact*.<sup>50</sup> In many cases, the only time a CAF II provider could be certain that it would not deploy to a census block in its CAF II area would be when the provider's time to build had expired,

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<sup>48</sup> Race Comments on ACR at 3; *see also* ORA Comments on ACR at 5, 11-12.

<sup>49</sup> AT&T Phase II Comments at 26-28; AT&T Comments on ACR at 11.

<sup>50</sup> 47 C.F.R. §§ 54.316 and 54.310.

because providers may need to retain census blocks until late in the CAF II service term in case they need to build in them to meet CAF II targets.<sup>51</sup> CAF II providers can voluntarily inform the Commission when they decide not to build out a particular census block in their CAF II area and, at that time, the census block can come back into consideration when the Commission is creating its next single list. No other approach would be fair to CAF II providers, consistent with CAF II, or workable in practice.

Frontier (at 4) does not oppose AT&T's proposal, but argues that the proposal "would be most effectively implemented" if the Commission first developed a small list of completely unserved areas and then undertook the "more difficult task" of developing a list of unserved households with slow service (less than 6/1). As shown above, the process proposed by AT&T would allow carriers to file applications 90 days after the final list of *all* eligible census blocks is established. Creating a dual process would just add confusion and expense. For example, it is quite possible that a potential project application could cover census blocks that have only dial-up service, as well as blocks that have less than 6/1 service, yet Frontier's proposal would require that provider to delay its application until after the second list.

As for the information that should be required to challenge the eligibility of a census block, AT&T agrees with the information proposed by Staff except for CalSPEED test results. For the reasons explained in prior comments, CalSPEED under-reports speed and therefore should not be used.<sup>52</sup> Instead, the parties should use one of the speed testing methods the FCC adopted in July 2018, subject to any changes the FCC makes over time.<sup>53</sup>

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<sup>51</sup> AT&T Phase II Comments at 27.

<sup>52</sup> AT&T Phase II Comments at 13-14.

<sup>53</sup> AT&T Comments on ACR at 7 n.11.

The commenters' various proposals to add on to or modify AT&T's proposed process all suffer from the flaw of trying to make the "perfect" (in their view) the enemy of the good. AT&T's process is straightforward and workable in light of the information available. The more one tries to add on new requirements or phases or factors, the more the process would become overloaded, inefficient, and unattractive.

## **B. Prioritizing Projects and Areas to Support**

### **1. Percentage of Request to Be Funded**

As discussed in prior comments, grants should be awarded for the full amount of a successful applicant's requested support. This issue is fully addressed in AT&T's reply to the comments filed on September 21, 2018 regarding the ALJ's September 5, 2018 ruling.<sup>54</sup>

### **2. Areas to Prioritize**

Public Utilities Code § 281(b)(2)(B) states that the Commission should "[g]ive preference to projects in areas where Internet connectivity is available only through dial-up service that are not served by any form of wireline or wireless facility-based broadband service or areas with no Internet connectivity." Because the statute only lists areas with no internet service or only dial-up internet service, those are the only areas that should be given priority. Frontier agrees (at 5) "that any designation of communities as priorities or eligible for a 'preference' should be based in statute and not be merely communities suggested for other reasons."<sup>55</sup> To the extent other commenters propose prioritizing based on other criteria or giving expedited review of priority applications, that simply is not authorized. In addition, prioritizing

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<sup>54</sup> Race (at 4) says that 100% funding should only be available in designated priority areas and where the applicant's financials show that it will not break even after seven years of operation. That proposal should be rejected because it would create a disincentive to submitting applications.

<sup>55</sup> See also CCTA Comments on ACR at 5; North Bay North Coast Consortium Comments at 4-6.

certain areas or giving them expedited treatment would undercut the uniform application process AT&T has proposed, in which all applications can be scored and evaluated against one another on the same criteria at the same time.

### **3. Treatment of Prioritized Areas or Communities**

As discussed in AT&T's prior filings, there should be no separate application process or expedited ministerial review process for low-income or high-priority areas.<sup>56</sup> All applications should be competitively submitted and evaluated at the same time and as part of the same process. CCTA (at 5) agrees that there should not be expedited review of any census blocks designated as priority; rather, they "must still be vetted through the full application process." The North Bay North Coast Consortium (at 4) also "recommends the Commission not prioritize communities via census blocks or census tracts going forward," stating that the Commission's previous approaches "have not significantly advanced the CASF program goal." Frontier (at 5) also opposes prioritization.

Joint Consumers (at 8-9) appear to support prioritization, but do not provide any particular proposal and caution the Commission to "be confident that its prioritization criteria are appropriate" because "stakes are high" and "the Commission risks dedicating funding to areas that do not need the help and sending inaccurate economic signals by favoring communities at the expense of others." GeoLinks (at 6) states that it "supports the idea of prioritizing areas," but again it does not have any particular proposal or census blocks that it believes should be prioritized. AT&T's proposal to award extra points to high-priority areas (as defined in Section 281(6)(7)(B)) – instead of developing a different or expedited process for approval of

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<sup>56</sup> AT&T Phase II Comments at 18; AT&T Phase II Reply Comments at 23.

applications – satisfies these commenters’ concerns while maintaining compliance with the statute.

Race (at 5) and CETF (at 8, 11) argue that priority areas should receive expedited treatment and higher funding percentages. Neither party explains how this could be done efficiently or economically. For example, some projects may have a mix of census blocks (high priority, low-income, and others), and networks are designed without regard to such categories. If different categories of census blocks are subject to different processes, things will become very complicated and providers will be forced to deploy inefficient networks if they wish to get funding. AT&T’s proposal, which uses the same process for all applications and permits extra points to be awarded to high-priority areas in the scoring phase, is a practical, workable approach that ensures carriers are not forced to deploy inefficient networks. All projects intended to bring 10/1 or faster retail broadband to CASF-eligible census blocks by definition benefit the public and should be encouraged.

### **C. Promoting Access to Broadband in Areas Adjacent to CAF II Areas**

If the Commission wants to incent CAF providers to build beyond their CAF II commitments to the FCC, the best way to do that is to make participation in the CASF program as attractive as possible, including by adopting the proposals made by AT&T, such as 100% funding of amounts requested for projects, a streamlined application process based on a single definitive list of eligible census blocks, reduced reporting requirements (especially when the per-household funding amounts requested are below Staff’s proposed thresholds), and monthly payments during projects.<sup>57</sup> This framework allows all providers—whether or not participating

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<sup>57</sup> AT&T Phase II Comments at 2-4 (summarizing key aspects of AT&T proposals).

in CAF II—to make rational business decisions on whether to participate. CAF II providers should be subject to the same application process as all other applicants.

As explained above, however, the FCC does not require participating CAF II providers to identify in advance where they will and will not deploy facilities and neither should the Commission, despite the calls by some commenters to impose mandates or condition benefits to CAF II providers on early reporting of CAF II deployment plans. Under the FCC’s process, CAF II providers are required to identify locations in eligible census blocks where they have deployed *after the fact*. This makes sense because a CAF II provider might not be certain about the locations where it will or will not deploy until the provider’s time to build has expired.<sup>58</sup> Under the commenters’ proposals, CAF II providers would have to choose between either prematurely abandoning their ability to build in some CAF II-eligible census blocks or stating that they intend to build before they know their actual plans or can reasonably make any such commitment. Forcing such decisions when the FCC does not would only discourage participation in the CASF program by CAF II providers. As Frontier explained (at 7), any “CPUC action to add to or undermine the federal rules that CAF II providers agreed to when accepting CAF II funds would be a strong disincentive for any provider to accept federal funds in the future.” The significant and unrealistic burdens that some commenters seek to force on CAF II providers would not serve the goals of the CASF program because they ignore the nature of the CAF II program.

#### **D. Payment Disbursement Process**

Funding for CASF broadband infrastructure projects should be disbursed on a monthly or bimonthly basis, consistent with CAF II, subject to a 20% holdback for completion of the project

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<sup>58</sup> AT&T Phase II Reply Comments at 26-28.

as AT&T has recommended.<sup>59</sup> The North Bay North Coast Consortium (at 7) agrees that “grantees should receive funding on a more frequent basis, either monthly or bi-monthly,” and that “[s]omething along the lines of what AT&T proposed should be considered.” While some parties did not comment on this issue, CETF (at 13) and Race (at 8) propose limited up-front funding – of perhaps 25% – and otherwise funding based on milestones, and Joint Consumers (at 14) propose funding based on milestones without any up-front funding. The Commission should reject those proposals. Monthly distributions address concerns about carriers covering the initial cost of a project and ensure cash flow for providers as a project proceeds.<sup>60</sup> Moreover, distributing funds on a monthly basis is consistent with the FCC’s CAF II, in which monthly disbursements of the total support accepted began the month after providers accepted offers of CAF II statewide commitments, although without the 20% holdback that AT&T has suggested here. The other proposals impose reporting and administrative duties that distract from the primary goal of completing the CASF construction.

#### **E. CASF Funding for Middle-Mile Infrastructure**

Public Utilities Code § 281(d)(5)(B) permits funding for a project that includes middle-mile infrastructure if it is “indispensable” to the project. Middle-mile infrastructure should be considered indispensable if it consists of facilities and/or functionality that the provider would need to deploy or otherwise secure and in the absence of which the provider would not be able to deliver at least 10/1 or better internet service to end-users in an eligible project area. Providers are in the best position to determine whether any existing middle-mile infrastructure is feasible and cost-effective, and embroiling the Commission in reviewing that decision would create a

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<sup>59</sup> AT&T Phase II Comments at 33-34; AT&T Comments on ACR at 13-14.

<sup>60</sup> AT&T Phase II Comments at 33-34; AT&T Phase II Reply Comments at 38.

disincentive for participating in the program.<sup>61</sup> With AT&T's recommendations to the CASF program, such as giving the most weight to applications seeking the least amount of funds per household, applicants will have a strong incentive to minimize requested funds and include middle-mile infrastructure and/or functionality only when necessary.

Most parties agree that there is a general lack of middle-mile facilities. For example, Race (at 9) explains: “[m]uch of the areas left unserved by broadband are because of the lack of middle-mile to bring broadband these rural or remote areas. . . . So for unserved areas particularly, it should not be surprising to see the need for new middle- mile infrastructure.” Most parties also agree that an applicant will not choose to build middle-mile infrastructure unless none is available or the rental prices are unreasonable, because applicants have every incentive to keep their cost per household low in order to have a better chance of winning funding and of building a profitable project.<sup>62</sup> As Race “assure[s]” the Commission (at 9), “[a] project can be completed a heck of a lot faster and at a much lower cost if you can find existing interconnection. Thus applicants have strong incentives to find existing middle-mile, and Race would be surprised if it was otherwise.”<sup>63</sup> Most parties also agree that the standard for funding middle-mile infrastructure should not be unduly strict because there is a strong need to encourage construction of such infrastructure.<sup>64</sup> Joint Consumers (at 15), for example, state that “the Commission should encourage deployment of middle-mile unless it is clearly duplicative and

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<sup>61</sup> AT&T Comments on ACR at 15-16.

<sup>62</sup> Joint Consumers' Comments on ACR at 15; Race Comments on ACR at 9-10; CETF Comments on ACR at 14.

<sup>63</sup> Race adds (at 10) that it “does not think there should be any arbitrary limits put on middle mile facilities. Applicants will not include middle-mile unless it is really necessary.”

<sup>64</sup> GeoLinks Comments on ACR at 8; Race Comments on ACR at 10; North Bay North Coast Consortium Comments on ACR at 7.

wasteful.”<sup>65</sup> And most parties agree that providers—not the Commission or its Staff—are in the best position to engineer their projects, including the need and solution for middle-mile facilities.<sup>66</sup>

Some parties, however, still propose that applicants be required to make unnecessarily onerous showings and explanations in order for an applicant to qualify for funding of middle-mile infrastructure.<sup>67</sup> Those proposals overlook the shortage of middle-mile infrastructure and would place a heavy burden on applicants that is both unnecessary and serves only to discourage investment. As previously explained, and as Race and GeoLinks agree,<sup>68</sup> just because middle-mile facilities might be available in an area does not mean those facilities are cost-effective or

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<sup>65</sup> Joint Consumers (at 15), however, undercut that sentiment by listing three things a provider should have to do to show that middle-mile infrastructure is indispensable. As stated in the text, applicants have a strong incentive to reduce the costs of its projects to the most efficient level and to make cost-effective choices about middle-mile infrastructure. Therefore, applicants should not have to go through an onerous process to provide data to defend their decisions – especially when many parties agree that there is a real need for more middle-mile infrastructure.

<sup>66</sup> Citizens/Frontier Phase II Comments at 9; North Bay North Coast Consortium at 7-8.

<sup>67</sup> See Joint Consumers at 15 (proposing that an applicant must show that no middle-mile provider exist within 10 miles, the middle-mile provider does not allow applicants to interconnect with those facilities, or rates are unfair and unreasonable); CCTA Comments on ACR at 6-7 (proposing that an applicant must show that all known middle-mile providers were contacted and no provider is able to offer facilities, and permitting challenges by middle-mile providers to show they can offer facilities); ORA Comments on ACR at 9 (proposing funding only where there are “no alternate methods for middle mile access,” requiring applicants to explain “why they cannot use existing infrastructure” and to provide “a cost-benefit analysis between using existing middle mile infrastructure and building new infrastructure.”); CETF Comments on ACR at 14 (proposing applicant “document that it cannot obtain access to middle-mile for the project for less than a 10-year period from any current or nearby middle-mile provider in the area.”) These proposals ignore, as stated in the text, that the applicant is in the best position to know if middle-mile facilities in the area are cost-effective and adequate, and applicants have the incentive not to include those facilities in an application unless absolutely necessary. In fact, in the very next paragraph after its proposal, CETF acknowledges that “[j]ust because middle-mile facilities may exist near a proposed CASF project does not mean that the CASF applicant has actual access to it.”

<sup>68</sup> As Race (at 10) explains: It is “alarm[ing]” that the Commission might deny middle mile funding merely because there is some other middle mile infrastructure in the area. “Just because middle-mile facilities may exist near a proposed CASF project does *not* mean that the CASF applicant has actual access to it.” GeoLinks (at 9) likewise explains that “even if there is backhaul or middle-mile infrastructure close to a project area, it does not necessarily mean that it is accessible.”

capable of providing the speed and quality the applicant seeks to provide. Applicants are in the best position to know whether they need middle-mile infrastructure for their particular project, and there is little incentive for them to include such facilities unless reasonably necessary. There is no reason to complicate the process by involving the Commission in second-guessing business, financial, and technological decisions better left to providers. AT&T's framework rewards provider efficiency and cost-effectiveness, but leaves such business, financial, and technology decisions to service providers.

Joint Consumers (at 15), ORA (at 9), and the North Bay North Coast Consortium (at 15) propose that if funding is provided for middle-mile infrastructure, the Commission should impose "open access" requirements, which the North Bay North Coast Consortium describes as "other providers may acquire access to fiber strands or backhaul services for competitive purposes."<sup>69</sup> While these parties provide little detail on this "open access" requirement (though ORA says the rates for "open access" should be cost-based), the effect would be mandated unbundling of middle-mile facilities. Putting aside the parties' failure to cite any authority for imposing such a requirement,<sup>70</sup> imposing such an obligation, with its significant costs and burdens to implement and administer, would very strongly discourage providers from participating in the CASF program and from seeking funds to deploy the very middle-mile infrastructure that most agree is sorely needed.

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<sup>69</sup> North Bay North Coast Consortium Comments on ACR at 8.

<sup>70</sup> There is no legal basis for requiring the unbundling of this infrastructure and such a requirement would be preempted. Moreover, unbundling requirements are a well-known disincentive to deployment of infrastructure, and such a requirement therefore would directly undercut the goals of the statute. *See U.S. Telecom Ass'n v. F.C.C.*, 290 F.3d 415, 427 (D.C. Cir. 2002) ("Each unbundling of an element imposes costs of its own, spreading the disincentive to invest in innovation and creating complex issues of managing shared facilities.").

#### IV. CONCLUSION

For the reasons stated in these and prior comments, AT&T respectfully requests that the Commission adopt AT&T's proposed adjustments to the Staff proposal in Appendix C to the Amended Scoping Memo to improve the CASF program.

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Respectfully submitted,

/s/

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