

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

Order Instituting Rulemaking to Consider)	
Modifications to the California Advanced)	Rulemaking No. 12-10-012
<u>Services Fund.</u>)	(Filed October 25, 2012)

**REPLY COMMENTS OF THE
CALIFORNIA EMERGING TECHNOLOGY FUND
ON PHASE II ISSUES**

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Pursuant to Rule 6.2(d) of the Commission’s Rules of Practice and Procedure and the schedule set forth in the Amended Scoping Memo and Ruling of the Assigned Commissioner (“Amended Scoping Memo”) issued February 14, 2018 in the above-referenced proceeding, the California Emerging Technology Fund (“CETF”) hereby timely files reply comments on Phase II of Rulemaking No. (R.) 12-10-012. In its initial Comments, CETF established its expertise as the only non-profit organization in the state set up by this Commission to work exclusively on Digital Divide issues in California.

I. DISCUSSION

A. Infrastructure Grant Account Issues

Section 1.1 Background Section: How to Measure the 98% of California Households in Each Consortia Region. The California Center for Rural Policy, Rural County Representatives of California, Upstate California Connect Consortium and the Northeastern California Connect Consortium (collectively, the “Consortia Group”) maintain that the Commission should clarify that the 98% standard be based upon *wireline access only* and should not count wireless or satellite access toward meeting this goal. The Consortia Group bases this on the fact that wireless and satellite access are often unreliable and will not meet the overarching goals of AB 1665.¹ Given this comment comes from a group representing very rural parts of the state with many unserved and underserved areas, CETF is cognizant why the Consortia Group has made this important request in order to have comparable and adequate broadband speeds in its rural areas as compared to the state’s urban areas. CETF reminds the Commission that Section 706 of the

¹ Consortia Group Comments, at 3.

Telecommunications Act of 1996 encourages deployment on a reasonable and timely basis of advanced telecommunications services to all Americans by this Commission.² While the CASF program is properly technology neutral as a matter of principle, CETF understands that the manner in which the Communications Division CASF Staff has implemented the program does address the underlying concern of the Consortia Group while ensuring that the Commission acts in a technology neutral manner. CETF supports what it understands is the current CASF Staff practice, which is to accept CASF applications based on *wireline* availability but then the regulatory analyst verifies *actual available* service (both *wireline and wireless*) in the field when analyzing the application, thus taking a wise “conservative” approach recognizing all the challenges of wireless technology to meet the needs of remote areas with lots of variations in terrain, dense foliage, mountains, and the like. CETF supports the continuation of this practice by the Commission. CETF asserts that technologies have different functionalities and that whatever technology is advanced by any given applicant, it must meet the *functionality needs of the consumers*. Further, these functionality needs of consumers will change over time as technology and applications change and advance. CETF posits that the Commission does have the flexibility to require applicants to discuss how the technology they are proposing will meet (or fall short) of functionality needs of the consumers in the areas served, particularly the last mile unserved households they must reach. This approach does not violate AB1665 but will expose the limitations of certain technologies in certain geographies with difficult terrains, dense foliage, and the like.

The Consortia Group further advocates secondary statutory preferences for areas with underserved areas, areas with service to both unserved area and adjacent served areas where the existing service is unreliable, projects that will facilitate local economic development, and for projects that will demonstrably alleviate poverty.³ The Consortia Group also asks that the Commission should require that in unserved areas adjacent to served areas with service speeds in excess of AB1665’s minimum standards, the CASF-funded project should provide uniformity to

² SEC. 706. ADVANCED TELECOMMUNICATIONS INCENTIVES. (a) IN GENERAL- The Commission and each State commission with regulatory jurisdiction over telecommunications services shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment. Telecommunications Act of 1996, Section 706.

³ Consortia Group Comments, at 4.

the adjacent served areas to avoid perpetuating existing patterns of disadvantaged communities. The measurement of the broadband speeds should be carried out during high peak broadband traffic hours in order to reflect actual speeds the customers will have available.⁴ CETF concurs that measurements of broadband speeds should be carried out during high peak broadband hours. Further, CETF is sympathetic to the Consortia Group's other requests, because with CASF dollars only reserved for projects for "unserved" areas until the Connect America Fund Phase II (CAF II) projects are completed by existing facilities-based providers in 2020, there is a mistaken belief that the CASF program is not usable for underserved areas or served areas with unreliable service. CETF emphasizes emphatically that CASF funds should continue to be used for underserved areas or served areas with unreliable service, in addition to unserved areas. CETF reiterates its main point from its initial Phase II comments: The only way to reach the 98% deployment goal for each region is for the Commission to proactively convene all stakeholders per region and develop scenarios to achieve 98% deployment goal while leveraging all resources (CAF II grants, public assets inventoried by the Regional Consortia, connecting other special purpose dedicated networks, etc.). In this way, we can surface bold applications that can scale and leverage all resources to achieve the 98% goal of service.

Section 1.2 Amount Available for Grants. The Staff Proposal had proposed to award grants to finance up to 100% of eligible project costs in low-income area census block groups, and projects with areas exceeding low-income standard may be awarded 80% of total project costs. Central Coast Broadband Consortia (CCBC) recommends that the Commission continue its current practice and add further criterion for determining the level of funding: (1) the service level that a proposed project is capable of delivering; and (2) that the applicant commits to offering and fulfilling for at least two years following project completion. CCBC further recommends setting a base funding level of 80% of project costs and applying the FCC's weighting criteria.⁵ Frontier proposes that the Commission act immediately to implement the full-funding provision of AB 1665. If the Commission is flooded with applications seeking full-funding, Frontier suggests that Staff prioritize projects in consortia regions below the 98% goal, in areas having no service or only dial-up service, and projects that utilize existing infrastructure or leverage federal investment. Another option, Frontier offers, is to announce an initial

⁴ Consortia Group Comments, at 4.

⁵ CCBC Comments, at 6-7.

application window for projects seeking full-funding and limit it to projects in consortia regions currently below \$5 million, and/or cost per-household is below \$3,000.⁶ Frontier supports the proposal that low-income status could justify full-funding of a CASF project, but proposes that the Commission consider full funding on a case-by-case basis and not make low-income the exclusive justification for full funding.⁷ Further, the Consortia Group recommends that the Commission should require that providers receiving low-income set-aside funding provide enforceable commitments that services will be affordable. Such applicants should be able to add underserved areas to their application to ensure viability.⁸

CETF opposes the Frontier's suggestions and finds that the well-intentioned CCBC and Consortia Group recommendations as just moving around the deck chairs on the Titanic. The clear priority set by AB1665 is to reach the 98% deployment goal and yet there are limited CASF dollars to reach the stated goal. Thus, every project granted CASF dollars must drive to 98% deployment in that region. The Commission should not continue its prior practice of being passive and awaiting applications from ISPs; these applications usually are for "cherry-picked" communities that are the most lucrative and leave out the unserved households in the most expensive and/or hard to serve areas. These cherry-picked applications do not deserve 100% funding, even if it addresses low-income communities. To reach the 98% goal, the most comprehensive applications can only be achieved by gathering together the regional consortia and other stakeholders *first* to determine all local assets that can be leveraged to reach 98% of the unserved households, and coming to an agreement on the best way to scale more ambitious projects to reach unserved areas -- plus underserved areas and served areas with unreliable service -- to achieve the 98% statutory goal.⁹ Then the Regional Consortia and the Commission can solicit ISPs to file competing applications that are cost effective and use whatever technology it thinks suits the project area best. Only those projects that scale to 98% of that region deserve an enhanced CASF award of project costs (e.g. 80%-100%). CETF does not oppose the low-income status of a project allowing a higher award, *after* this collaborative

⁶ Frontier Comments, at 3.

⁷ Frontier Comments, at 4.

⁸ Consortia Group Comments, at 6.

⁹ CETF observes that Frontier is not a company that has been actively collaborating with the Regional Consortia and it seems more inclined to "game the CASF system" as we noted in our initial comments (Frontier's Desert Shores CASF Application filed right after Frontier filed notice with CPUC to release this CAF II area, boxing out other independent ISPs from applying for the area).

process has taken place to ensure the project is cost effective, uses the best technology for the project, and leverages all local assets to reach 98% of the project area region.

The Consortia Group proposes that the Commission refine the standards for determining whether middle-mile infrastructure is indispensable for accessing the last-mile infrastructure. It suggests that these standards should clarify that new middle-mile infrastructure is “indispensable” when existing infrastructure is either unavailable due to the owner’s refusal to provide legally binding access commitments or is unaffordable. It notes there are few regulatory or market incentives for middle-mile infrastructure owners to allow other providers of last mile service to access their infrastructure.¹⁰ CETF concurs in the important concerns on middle-mile availability flagged by the Consortia Group comments. In fact, in the original AB1665 bill language and during the public hearings on the bill, CETF sought a finding in the bill that the financial feasibility of last-mile deployment depends on cost-effective middle-mile backhaul. CETF recommended that the Commission be proactive in not allowing incumbent facilities-based providers to engage in rolling protectionism that blocks innovation and opportunity for smaller Internet companies by denying access to existing backhaul at affordable rates on a non-discriminatory basis. This could be made clear at the Regional Consortia collaborative meetings by the Commission. The obvious analogy is the obligation of incumbent telephone companies under federal law to provide on terms and conditions that are just, reasonable and nondiscriminatory any technically feasible method of obtaining interconnection or access to unbundled network elements at a particular point upon request of a telecommunications carrier.¹¹ Similarly this Commission can inform all Internet Service Providers – and regional networks -- of its expectation that they afford any other Internet Service Provider just, reasonable and non-discriminatory access to middle-mile facilities. This sharing of middle-mile facilities will lower costs of projects and properly leverage the state’s existing assets. Further, this Commission should proactively explore the use of middle-mile facilities of special use networks, such as educational networks, FirstNet, municipal fiber projects, emergency responder networks, etc. that may assist in bringing last-mile projects service in unserved areas.

¹⁰ Consortia Group Comments, at 5.

¹¹ See 47 Code of Federal Regulations 51.321, methods of obtaining interconnection and access to unbundled elements under section 251 of the Telecom Act of 1996.

Section 1.3 Definitions. The Consortia Group proposes that the broadband speeds in certain definitions should be measured during high peak broadband traffic hours, and that outages above a reasonable standard should be included in the criteria to determine the served or unserved household status. Also, it recommends that the definition of “underserved community” should match the Federal Communications Commission benchmark broadband definition as connection speeds of at least 25 megabits per second (Mbps) downstream and 3 Mbps upstream. It should include communities that are at risk of outages during a natural disaster or otherwise because of a lack of route diversity.¹² CETF commends the Consortia Group for bringing up these important issues relating to speed, reliability, and resilience of broadband service. While the Commission does not have discretion on the minimum speeds set forth in AB1665, CETF recommends that the CASF program can continue to provide higher scoring credits for competing CASF applications proposing faster speeds. CETF certainly agrees that the AB1665 speed of 10 Mbps download and 1 Mbps upload fall short of the FCC’s 25 Mbps download and 3 Mbps upload broadband benchmark speeds, not to mention the 100 Mbps speeds of the New York Broadband for All Program.¹³ As in the Climate Change and greenhouse gas emissions arena, CETF urges the Commission promote aspirational speed goals with milestones among our state’s ISPs. California is the home of Silicon Valley, the App industry, and the entertainment industry, and these industries require world class broadband to stay globally competitive.

In fact, similar to the quality of service requirements contained in this Commission’s telephone regulations, there should be quality of service requirements embedded in the CASF definitions. This would help ensure that advertised speeds are actually delivered, that the service is consistently reliable, that outages are required to be reported so that repeated outages can be addressed by prompt Commission action, and that route diversity is correctly recognized as a requirement.¹⁴ During the Commission’s public hearings for the Frontier-Verizon merger,¹⁵ there was ample public testimony about how a fiber cut could take down Internet service (and thus credit card services, voice service and the ability to call 9-1-1) to entire communities for

¹² Consortia Group Comments, at 6-7.

¹³ New York has a 99.9% coverage goal of its state, with speeds of 100 Mbps download, and 25 Mbps download in very remote unserved areas of the state. <https://www.ny.gov/programs/broadband-all>

¹⁴ Route diversity may also be called redundancy and is a cornerstone of Internet architecture. Should data transmission be blocked by an outage in one sector, the Internet automatically sends the data on new paths to its destination. In many rural and remote areas however, there is only one Internet path in and out of these areas.

¹⁵ See Decision No. 15-12-005 in Application No. 15-03-005 in which Frontier Communications purchased the landline systems of Verizon California.

days and even weeks. This Commission should ensure that as the state transitions from telephone copper networks to modern broadband networks, the service provided is of a minimum quality of service, reliable, resilient in disasters, and affordable to our residents.

Race Communications (“Race”) requests the overbroad definition of “Eligible Project” areas be refined to include an area that is within a CAF II area, but where the existing facilities-based carrier has notified the Commission that it has completed its CAF deployment in the census block, and thus that area is eligible for CASF grants as to the households that remain unserved by the incumbent at speeds of 6 Mbps download and 1 Mbps upload.¹⁶ CETF agrees with Race. The Commission immediately should require verified reporting by any existing facilities-based provider who accepted CAF II funds to indicate which exact areas (down to household level) they intend to build out in each Census Block with the CAF II funds so that the remaining areas/households can be marked eligible in the California Broadband Map for CASF grants. Further, if a CAF II area is released by an existing facilities-based provider, there should be a 90-day period before new CASF infrastructure applications are accepted to give all ISPs the ability to study the released areas and submit their best, most cost-effective application that drives to the 98% goal.

AT&T proposes that the Commission modify Appendix C to define “households” as the California Legislature has previously defined that term elsewhere in the Public Utilities Code, as “a house, an apartment, a mobile home, a group of rooms, or a single room that is intended for occupancy as separate living quarters.” AT&T argues that using this definition will remove the vagaries that would arise from counting “households” as only occupied housing units.¹⁷ CETF completely agrees with AT&T that this is an important change that will update the existing outdated definition of a “household,” and bring it in step with modern American housing patterns.

Section 1.4 Eligible Applications. The Consortia Group proposes to include Tribal governments as entitles eligible for infrastructure grants.¹⁸ CETF supports this suggestion; many Tribal lands lack broadband. CETF further requests the Commission make special efforts that Tribal governments are invited to regional consortia collaborations on the 98% goals, and that

¹⁶ Race Comments, at 4.

¹⁷ AT&T Comments, at 8.

¹⁸ Consortia Group Comments, at 7.

CASF Staff make special efforts to brief Tribal representatives on the CASF program to encourage participation.

AT&T proposes that rather than having ISPs submit applications that are subject to subsequent eligibility challenges, the Commission should develop a single definitive list of CASF-eligible census blocks, including which census blocks qualify as low-income and/or high-priority, in advance of the application date. As part of establishing the list, AT&T proposes reliance on 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 deployed 10/1 internet access pursuant to CAF.¹⁹ CETF opposes this recommendation in the absence of CAF II recipients and existing facilities-based providers promptly providing the Commission with detailed information about its CAF II and ROFR construction plans for full transparency, so that households not scheduled for broadband upgrade will be marked eligible on the Broadband Map. It is well known that the Form 477 data is overstated in terms of actual service to households, due to the large reporting blocks and ability of the provider to claim an entire census block group as “served” if a single household in it is served. Further, the CAF II rules do not require an incumbent local exchange carrier to build to every household in the census block; it funds only certain households and gives the incumbent until 2020 to complete its build with milestones. Construction pursuant to a ROFR should be checked by the Commission to ensure it was built, plus a verification by the provider under penalty of perjury that it was in fact completed in the 180-day timeframe. This Commission should not allow the existing facilities-based providers to engage in rolling protectionism of their service areas in a way that blocks innovation and opportunity for smaller companies who desire to participate in CASF and bring services to the public immediately.

Section 1.5 Application Process. CETF notes little support by commenters for the Request for Proposal via the State contracting process idea advanced in the Staff proposal. Both Frontier and CETF agree that new untested application processes will further delay needed service to the public.²⁰ Instead both agree that the Commission should continue to accept applications on a rolling basis. CETF does not support AT&T’s position that all applications

¹⁹ AT&T Comments, at 4.

²⁰ Frontier Comments, at 5.

should be submitted at the same time and evaluated in the same time frame.²¹ CETF recommends the applications should be scored on a simple screening process as to cost-effectiveness and contribution to the 98% deployment goal mandated by AB1665, with the proposals at scale with the most impact to achieve the 98% deployment goal being considered first with grants within six months of filing. CETF does not favor continuation of the passive approach of the Commission as to applications and urges Commission leadership in convening the Regional Consortia and stakeholders in order to agree upon projects that scale to achieve the 98% goal.

CETF and AT&T agree that CASF application processing needs to be must faster than the current year or more timeframe. AT&T suggested 120 days;²² CETF recommends that 180 days is a reasonable time frame and suggests a simpler screening process as mentioned in the paragraph above.

Section 1.6 Information Required of Applicants. The comments expressed a fair amount of heartburn over the Staff's proposal of 16 requirements for CASF Grant Applications. Overall, CETF strongly suggests that the Commission rethink its process. Currently applications filter in with ISPs "cherry picking" the areas with the most unserved/underserved households, and leave out the remote and difficult to serve areas because they are "uneconomic." The Commission will not get to the statutory 98% goal if this passive process continues in the new CASF era. It is a fact that in order to get utility infrastructure to very rural areas, the government must have incentives and infrastructure grants. This is what we learned with telephone, electric and water services. For competitive services like telecommunications, programs like the High Cost Funds A and B exist at the Commission and the Connect America Fund at the FCC exist because it is very expensive to get telephone service to rural and remote areas. Thus urban users pay more to help subsidize service to the rural users. The primary reason for this is that the network is more useful with everyone connected to it. The same should hold for broadband.

So in processing CASF Applications, CETF recommends the Commission significantly reduce its requirements and focus on ensuring the applicant is building the project to scale to the 98% goal, meets the required speed requirements, and has adequate funding for the match. Many of the requirements are not critical, such as the description of existing infrastructure in the

²¹ AT&T Comments, at 17.

²² AT&T Comments, at 3.

area (which, as the Consortia Group and AT&T point out,²³ the applicant likely cannot find out from the incumbents), median household incomes (which is easily looked up on the US Census website), marketing/outreach plans, letters of support, business plans, and pricing commitments.

CETF disagrees with Frontier's request that if detailed viability information is required, the Commission treat it with full confidentiality.²⁴ While protection of confidential proprietary information is appropriate, CETF does not agree that confidentiality is warranted for build out plans for CAF II and Memorandum of Understanding (MOU) public benefit obligations that a carrier must comply with due to a corporate merger decision. The public deserves to know if and when the provider is complying with its MOU obligations, and whether the provider is building out its CAF II obligations for which it accepted FCC funds. Also, the Commission bears the burden of taking the CAF II and MOU information and ensuring that the Broadband Maps properly reflect their builds, so that areas that will remain unserved are marked eligible for a CASF grant.

Race has asked for some changes relating to performance bonds, and one was to relieve performance bond requirements for entities that have three years of financials from an operating business.²⁵ AT&T went further and proposes that the performance bond requirement should be removed. AT&T notes that given the Commission's ability to impose penalties and the ability to hold back payment on the last 20% of funding, the Commission already has significant leverage over providers to create a strong incentive to meet all CASF requirements. If the Commission elects to continue requiring a performance bond, it should also give applicants the option of providing a letter of credit, consistent with FCC's requirements under CAF II.²⁶ CETF supports Race's suggested revisions to require reasonable bonding that take past performance into account with a penalty being ineligibility to apply for future CASF funds if an applicant fails to perform on any given project. Further, CETF supports an option of a letter of credit which may be helpful for some smaller companies.

AT&T makes three proposals that CETF supports: (1) having CASF applicants specify the latency of their proposed service as part of the applications and as part of the scoring criteria; (2) having applicants that submit proposals below a low per-household cost be relieved from

²³ Consortia Group Comments, at 6; AT&T Comments, at 13.

²⁴ Frontier Comments, at 10.

²⁵ Race Comments, at 5.

²⁶ AT&T Comments, at 15-16.

certain application and reporting requirements;²⁷ and (3) remove the blanket 24-month deployment schedule requirement.²⁸ CETF agrees that these ideas have merit. Latency is secondary in importance to speed in terms of quality of broadband service and should be a part of the assessment for grants. CETF further supports greatly reducing the application information process to speed worthy grants along so long as they are cost effective and scale to the 98% goal. Finally, CETF agrees the blanket 24-month deployment schedule is not realistic given the experience we have since the program began, due to a variety of factors including California Environmental Quality Act (CEQA) review, permitting difficulties, weather conditions that cause construction delays and the like. Instead the Commission should consider granting a deployment requirement in the final resolution that makes sense for that project and the CEQA review period but does not over penalize grantees who miss the deployment deadlines. There are but a small handful of CASF projects that have not deployed within a reasonable timeframe of four years. Absent legitimate reasons and good faith efforts, any grantee who has not started a project by year four should have the project revoked and the project area deemed eligible.

Section 1.7 Low-Income Communities – Expedited Ministerial Review. CETF joins with Frontier in challenging the statutory basis for a mandatory requirement of low-income status in order to receive expedited ministerial application treatment to obtain broadband for a community.²⁹ CETF’s Annual Surveys show that low-income communities are not the only communities that suffer from a lack of broadband access and adoption; communities who sit on the wrong side of the Digital Divide include those who live in rural, remote and Tribal land communities, those with low education levels (such as farmworker communities), those who are non-English speaking, those who are minorities, and people with disabilities. Thus, CETF cannot support a single low-income criterion to obtain expedited ministerial review and urges the Commission to reject this proposal. While well intentioned, the data does not bear out the rationale for such a preference, nor does the statute support it.

TURN and Greenlining spend much time trying to ensure that projects proposed for expedited ministerial review are cost effective, and propose average cost per household benchmarks for eligibility developed after workshops, comments, and cost modeling similar to the FCC approach taken for the Connect America Fund for rural fiber deployment but adapted

²⁷ AT&T Comments, at 14 and 4.

²⁸ AT&T Comments, at 14-15.

²⁹ Frontier Comments, at 5.

for California costs.³⁰ While thoughtful, CETF cannot support this approach due to the delay it will engender going through a long Commission regulatory process (workshops or comments, Commission proposed decision (PD), PD comments, PD reply comments, decision, applications for rehearing) to adopt appropriate benchmarks. A focus on cost models does not seem to be a productive use of time and energy for the Communications Division when time is of the essence to bring broadband to unserved communities. CETF promotes a qualitative goal (focusing on reaching 98% deployment in each consortia area) rather than an arbitrary quantitative threshold marker that relates to nothing as to that specific project area. Today CETF suggests the CAF II average household cost of \$2,550 is the most reasonable threshold cost, but notes that California is more expensive, large and geographically challenging than many states. For a dozen different reasons, this may not be feasible for all households in unserved areas, due to distance from the nearest backhaul and Internet Point of Presence, geographic challenges like mountains, ridges and water bodies, etc. So an arbitrary benchmark that discourages yet again construction to high cost unserved areas makes no sense to CETF.

CETF supports the suggestion of the Consortia Group that during the review process, the Staff seek out input from the Regional Consortia for that project to tap their local expertise and obtain its assessment of the project. CETF goes further and urges the Commission to be proactive in leading collaboration with the Regional Consortia to convene all stakeholders in the key rural regions (Northeast, Sacramento Valley, San Joaquin Valley, Inland Empire, Border Region, North Bay/North Coast, and Central Sierras) to identify public assets, aggregate demand, and develop preferred scenarios so no region is left behind. Then the Commission should give priority attention to all CASF infrastructure applications that scale to drive to 98% percent deployment and are the most cost-effective. The Commission should adopt a simple screening process for such applications that results in grants within six months. Finally, the Commission should give priority attention (which can include expedited, ministerial approval) to CASF infrastructure applications that include low-income and other disadvantaged communities (rural, remote, farmworker and Tribal lands) shown to have low access and adoption rates. The Staff should not, however, reject or ignore worthy CASF applications that are at scale that drive the 98% broadband deployment goal but do not involve a disadvantaged or low-income community.

³⁰ TURN/Greenlining at 1-3.

Those applications should continue to be granted to drive to the 98% deployment goal consistent with the clear statutory language.

Section 1.8 High Priority Area- Request for Proposal Ministerial Review. CETF and Frontier both object to using an RFP state contracting process for “High Priority” projects.³¹ CETF does not see this lengthy process as adding anything except introducing a radically new process which will take too long to implement and further confuse and discourage applicants. TURN/Greenlining is critical of the proposed RFP process due to a lack of local input, a point with which CETF strongly agrees. The consumer groups correctly point out that working with local stakeholders can be effective in finding and recruiting applicants, and identifying best the local needs to boost adoption and subscriptions once build.³²

TURN/Greenlining ask the Commission clarify its criteria for “high-priority areas,” and suggests that elements should include number of low-income and vulnerable households in the project area, slow broadband speeds, higher household density, economic and social impacts (anchor institutions or school age children) and number of unserved households.³³ CETF supports the general concept of “High Priority” projects but it should be done as CETF suggests in its initial comments: The Commission to be proactive in leading collaboration with the Regional Consortia to convene all stakeholders in the key rural regions to identify public assets, aggregate demand, and develop preferred scenarios so no region is left behind. Then the Commission should give priority attention to all CASF infrastructure applications that scale to drive to 98% percent deployment and are the most cost-effective, and adopt a simple screening process for such applications that results in grants within six months. Finally, the Commission should give priority attention (which can include expedited, ministerial approval) to CASF infrastructure applications that include low-income and other disadvantaged communities (rural, remote, farmworker, non-English speaking, minority, and Tribal lands) shown to have low access and adoption rates in annual broadband surveys in the state. The latter point is supported by the TURN/Greenlining comments, cited above.

Section 1.9 Right of First Refusal. CETF supports the concern of CCBC that the right of first refusal (ROFR) process not be a means for incumbent providers to block competition, and

³¹ Frontier Comments, at 6, 2.

³² TURN/Greenlining, at 5-6, 7-8.

³³ TURN/Greenlining at 4-5.

that extensions beyond 180 days not be allowed at all, consistent with the statute.³⁴ CETF agrees with CCBC and Gold Country Broadband Consortia (GCBC) that failure to complete promised upgrades within a certain timeframe should result in consequences.³⁵ CETF supports CCBC's suggestion to ban a provider that did not build the area for which it sought ROFR from filing a ROFR for a year, and making the area that was not build out eligible for CASF grant immediately for a year by any other provider.³⁶ CETF further suggests a provider be required to have an officer sign a statement under penalty of perjury that the specific area for which a ROFR was filed state it was indeed built at the end of the 180-day period. CETF notes the Commission also has at its disposal fines and penalties for misrepresentation by a CASF grantee under Section 2107 of the PU Code. CETF supports Race's recommendation that if any incumbent uses a ROFR, it not be extended more than once beyond the 180 days. Any extension should be based on evidence that real significant process is being made and should be supported by an officer declaration under penalty of perjury.³⁷

Section 1.10 Treatment of CAF II Areas. CETF agrees with the Consortia Group's position that no additional financial incentives or subsidies should be provided to existing facility-based providers in CAF II areas to meet AB 1665's minimum service standards. CASF funding should be allowed, however, to enhance service beyond the minimum CAF II requirements, especially for a project that will meet the current FCC standard of 25 Mbps down and 3 Mbps upload.³⁸ Further, CETF supports CGBC's suggestion that a new process be adopted that will better equip Regional Consortia to recognize which CAF II areas will be prioritized during the timeframes before 2020. CGBC suggests that CAF II-funded providers be required to provide detail on its prioritized areas and share this information with the Regional Consortia (and the Commission) in an effort to increase transparency as to where the federal funds have gone.³⁹ This concept is consistent with CETF's suggestion that the Commission should require transparency in verified semi-annual reports from existing facilities-based providers regarding their construction plans under CAF II obligations or in MOUs pursuant to public benefit obligations imposed as conditions by this Commission or the FCC's approval of

³⁴ CCBC Comments, at p. 4.

³⁵ GCBC Comments, at 2-3, CCBC Comments, at 4.

³⁶ CCBC Comments, at 9.

³⁷ Race Comments, at 7.

³⁸ Consortia Group Comments, at 9.

³⁹ CGBC Comments, at 3.

corporate consolidations and mergers. Should the provider not build out an area after reserving it, there should be a penalty. Should a CAF II area be released by a provider, there should be a 90-day time-period before a CASF application will be accepted. CETF recommends encouraging existing facilities-based providers using CAF II or meeting MOU obligations to commit to larger projects using CASF funds to drive to the 98% deployment goal. Providers should be required to describe the process they used to evaluate how they might be able to go beyond their specific application area and project to help achieve 98 percent deployment and why they concluded it was not feasible to achieve a greater impact.⁴⁰

Section 1.11 Submission and Selection Timelines. Uniformly, commenters including CETF rejected the Staff proposal for an annual submission of CASF applications, three months after annual ROFR determinations are made.⁴¹ Most parties stated that this proposal would inject more delay to service to the public, was too rigid, and would key annual application submissions to the ROFR which in truth have been lightly used to date. Many commenters instead urged simpler application requirements,⁴² and methods for faster Staff processing to allow for grants in the 6-9 month timeframe. There was support for applications to continue to be accepted on a rolling basis, with a simpler screening process. CETF suggests that proposals with the most impact on the 98% goal should be processed first. Finally, CETF agrees with Race's suggestion that once an application is filed for a particular project area, should a second application be filed for the same or overlapping project area, it should be either rejected or at least held in abeyance until the first application is processed.⁴³

Section 1.12 Posting of Applications. CETF agrees with Race's request that CASF rules be clarified that the posting of applications to the CASF website and service to the CASF Distribution list does not in itself create a new challenge period.⁴⁴

Section 1.13 Project Challenges. CETF agrees with CCBC and Race which advocate that the 21-day limit for project challenges should be the only project challenge period allowed.⁴⁵

⁴⁰ CETF Comments, at p. 3

⁴¹ Frontier Comments, at 10; Consortia Group Comments, at 10, CCBC Comments, at 5, CETF Comments, at 5, Race Comments, at 8.

⁴² CCBC Comments at 5, CETF at 5, and Race Communications at 8.

⁴³ Race Comments, at 8.

⁴⁴ Race Comments, at 9.

⁴⁵ CCBC Comments, at 4. Race Comments, at 9.

CETF also supports the Race suggestion that there be a 20-day deadline for the challenger to submit its evidence of the served status of any part of the project area to the Communications Division and a 30-day deadline for which the challenge will be resolved.⁴⁶ The challenge period should be delineated and enforced for the timely and orderly processing of CASF applications. Further, CETF agrees with CCBC's observation that too often the CASF challenge process is being used as a means for existing providers to improperly delay project consideration, or to derail projects after the 21-day challenge period has passed. CETF observes that the CASF Staff repeatedly has deviated from the traditional Commission practice that do not allow late protests beyond those stated in a program's rules.⁴⁷

CEQA Payment. CETF echoes the concerns of Frontier about requiring too much preliminary CEQA review before a grant is awarded because it will deter providers from submitting CASF applications. Further, CETF agrees with Frontier that the proposal that the Commission pay CEQA consultants directly may cause many unintended consequences.⁴⁸ CETF is sympathetic to the cash flow issues that the current process creates, however, and the desire of the Staff to relieve this problem. CETF recommends that the Commission streamline the process for CEQA review and reduce overly high charges from the Commission's Energy Division for internal reviews of CEQA documents. The Commission should work with the Regional Consortia, applicants and other stakeholders to convene in one meeting at the beginning of an infrastructure project all the environmental reviewing and permitting agencies to identify environmental and cultural issues and work out a schedule for reviews and permitting.⁴⁹

Semi-Annual Reporting and Completion Reports. CETF agrees with the Consortia Group who proposes that the competition reports should include attestation that all households in the project area are offered service and at the minimum program speeds, as measured at high peak traffic hours.⁵⁰ CETF is comfortable with some flexibility as to the current quarterly

⁴⁶ Race Comments, at 9.

⁴⁷ This unfortunate unchecked practice in the Communications Division has caused confusion, frustration, significant delay, and the removal of parts of project areas although the challenger filed after the mandated challenge period. Late challenges that are accepted then mean the original project must be amended at additional costs to the applicant. When the amended project is reposted to the CASF Distribution List, this can prompt new late challenges, often entertained again by the CASF Staff, which causes more delay, new amendments, and significant unfairness to the applicant. The ultimate loser is the public who has needed service delayed.

⁴⁸ Frontier Comments, at 8.

⁴⁹ CETF Comments, at 4.

⁵⁰ Consortia Group, at 11.

reporting requirements so that there is less burden on the applicant, particularly when it is in a time of inactivity due to CEQA review. CETF finds acceptable either semi-annual or even annual reports as AT&T suggests.⁵¹ The key is ensuring that the Commission becomes aware of any delays within a reasonable timeframe, so it can see what it can do to help to ensure service to the public. CETF opposes AT&T's proposals to have different speed tests than the CalSPEED test proposed by the Staff,⁵² as it is unclear what the FCC Connect America Fund tests will be at this point. AT&T did not proffer independent evidence to support its claim that CalSPEED underreports speeds.

Payment. CETF merely states its position that all payments need to be pursuant to performance, not cost reimbursement, and performed in a manner to reduce bureaucracy and delays in payment.

B. Line Extension Program Issues

CETF agrees with Frontier, who proposes that the Commission put the line extension program (LEP) in a Phase III of this proceeding to focus on the far more important Infrastructure grants. CETF agrees with Frontier that accountability and the transfer of ownership are sticky issues that require careful consideration,⁵³ and CETF would add eligibility and avoidance of fraud, waste and abuse as other key issues.

CETF frankly is skeptical about the utility of this line extension program in a broadband context. The line extension program language appeared in the final days before passage of the AB1665 bill and appears to be based upon a cable industry concept where cable companies had defined local franchise service areas and did not have obligations to serve households or businesses outside of that local franchise area. Line extension programs allow cable companies to charge homeowners and businesses for the full cost of extending service to their property regardless of whether or not the new line passes other potential customers. CETF is hard pressed to understand the application of this cable line extension model to the broadband market place where there are no "local franchise service areas." In truth, line extension programs allow

⁵¹ AT&T Comments, at 4.

⁵² AT&T Comments, at 4.

⁵³ Frontier Comments, at 7.

wealthy customers to demand the cable company serve their properties, while low-income consumers lack assets to do the same.

Further, the funds allocated to the line extension program pot is so modest that the utility of the program is questionable. As a result, CETF and Race are in accord that the rules be simple and easy to administrate.⁵⁴ As CETF suggested in its comments, the Commission should require LEP applicants to demonstrate that there is no better alternative and this is the last resort to obtain broadband service. To avoid duplication, the Commission should further determine that there is no larger project in the foreseeable future that can reach the households and/or businesses requesting a line extension before approving large amounts of funds for the purpose.

Both Race and CETF are in accord that there should be a fair sharing of costs by a LEP applicant to put some “skin in the game.” CETF endorses the concept of a reasonable cap on the LEP amount allowed each applicant as suggested by Race that has more experience in this arena and suggested actual dollar amounts for Commission consideration.⁵⁵ Finally, CETF finds meritorious the idea of GCBC that there be some type of repayment to the CASF fund by the facilities-based provider that assumes ownership of the facilities, which would refresh the modest account.⁵⁶

C. Rural and Regional Urban Consortia Account.

Race has endorsed CETF’s proposals that Regional Consortia should be encouraged and funded to inventory all public assets which would be available on an open, competitive basis to all ISPs interested in preparing CASF infrastructure applications.⁵⁷ The Commission should encourage, recognize and fund aggregation of demand as a fundamental public asset to drive deployment.

Further, the Commission should urge Regional Consortia to engage local government elected officials in their General Plans to encourage broadband deployment and adoption. The Consortia Group has agreed with CETF that consortia activities that are supported by the Commission should explicitly include supporting local government to develop and implement

⁵⁴ Race Comments, at 10.

⁵⁵ Race Comments, at 10.

⁵⁶ GCBC Comments, at 3.

⁵⁷ Race Comments, at 10.

local policies which will make CASF grants more competitive and lower the costs for users.⁵⁸ In their comments, TURN/Greenlining also discussed the important role of the Regional Consortia particularly in promoting broadband adoption in their comments at pages 15-16. CETF is in accord.

CETF agrees with the Consortia Group that Regional Consortia should be allowed to assist applications with local environmental permit procedures and access to right-of-ways in local jurisdictions.⁵⁹ CETF prepared and published the Guidelines for Local and Regional Governmental Leaders⁶⁰ and this is available on the CETF website as a resource to the Commission and the Regional Consortia.

Section 4. Eligible Applicants. CETF comments that there is no need for additional Regional Consortia at this time. The current Regional Consortia adequately represent the areas that are most in need of broadband, and only one consortium per geographic region is appropriate.

Section 9 Reporting. CETF notes GCBC's position that a quarterly reporting standard should be retained in order to ensure quarterly reimbursement.⁶¹ CETF is sympathetic to the fact that the Regional Consortia are generally small non-profit organizations and need regular reimbursement. See our comments immediately below relating to payment.

Section 11 Payment. CETF recommends that the Commission move to a performance-based grant for the Regional Consortia and abandon the time-consuming, bureaucratic process of reimbursement payments. This new process will provide better incentives for performance by the Regional Consortia and reduce the burden on the Commission of reviewing the invoices and receipts that it currently undertakes.

⁵⁸ Consortia Group, at 13.

⁵⁹ Consortia Group, at 13.

⁶⁰ <http://www.cetfund.org/investments/initiative-smart-communities/model-policies-ordinances>

⁶¹ GCBC Comments, at 3-4.

WHEREFORE, CETF respectfully requests the Commission amend its CASF Phase II proposals contained in Appendix C to be in accord with its Comments and Reply Comments. The laser focus of the CASF program should be to drive to the 98 percent broadband deployment in each region goal, with strong, proactive leadership by this Commission and its Staff to meet the Legislative mandate and bridge the Digital Divide. Our state's economic future depends on Commission action.

Respectfully submitted,

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