

**BEFORE THE PUBLIC UTILITIES COMMISSION**

**OF THE STATE OF CALIFORNIA**

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

**COMMENTS OF RACE TELECOMMUNICATIONS, INC. (U-7060-C)  
ON PROPOSED DECISION OF COMMISSIONER GUZMAN ACEVES  
IMPLEMENTING THE CALIFORNIA ADVANCED SERVICES FUND  
INFRASTRUCTURE ACCOUNT REVISED RULES**

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Pursuant to Rule 14.3 of the Commission’s Rules of Practice and Procedure, Race Telecommunications, Inc. (“Race”) hereby timely files its Comments on the Proposed Decision of Commissioner Guzman Aceves, entitled “Decision Implementing the California Advanced Services Fund Infrastructure Account Revised Rules” (“Phase II PD”), released on November 9, 2018. Race is a party to this proceeding and has received ten CASF grants which will bring fast broadband access to 15,850 unserved and underserved households.

Race commends the Commission and its Staff on its hard work to implement AB1665 in an expedient manner, while streamlining the application process, promoting fairness between competing providers, and increasing transparency and accountability in the program. Race overall finds that the PD strikes a fair balance on the many complex issues in this infrastructure phase. Race only has a handful of comments.

2.1 Determination of Eligible Areas and Served Status. This portion of the PD candidly acknowledges two problems with the past program: (1) a service provider’s claims of service determined ineligible census blocks and yet not all households in a census block could have service actually available to them, resulting on frustrated community members who do not have broadband service yet the map shows them as “served”; and (2) the lengthy CASF review process, which is difficult on applicants and the target community. (PD, at page 8). Race is hopeful that the new processes proposed in the PD to determine eligible areas will lead to much improved timely application processing, and to more granular data collection on which the California Broadband Map is based. Race believes that the PD at page 11 puts the finger on the data problem where it notes that “in certain instances, the deployment data submitted by

providers overstates broadband availability and that the submitted data is inaccurate in other says, including the miscoding identified by the CCBC.” The PD properly notes that these errors have major consequences for the CASF program, because corrections are time-consuming for the Communications Division Staff, and errors cause confusion and frustration for communities and CASF applicants who must rely on the maps for eligibility decisions. Race contends that the Commission should take a more aggressive enforcement stance if data is consistently provided to the Commission that is erroneous and/or overstated by a particular existing provider. Providing erroneous data on coverage is a Rule 1.1 violation and should be treated as such. To that end, the Commission could add a footnote at the end of the second sentence in the first paragraph of Section 2.1.2 “Discussion”, that states “The Commission reminds providers that deployment data submitted to the Commission is covered by Rule 1.1, and should be accurate as to actual service availability and coverage.”

2.2 Funding Criteria. Race commends the Commission on including the ability for an applicant to obtain a higher funding level if it serves a low-income community. (PD at 22) Most of Race’s CASF projects have encompassed low income communities. Race takes issue with the Commission’s use of the energy CARE program’s definition of low income, currently \$50,200 for a family of four. Income levels vary greatly depending on the part of the state. Compare the low household income of the upper North, Inland Empire, and Central Valley counties with the urban counties (i.e. San Francisco, Los Angeles, Monterey/Pacific Grove/Carmel) along the coast. There are pockets of poverty tucked amidst wealthier neighborhoods. Using the CARE low-income household income figure may result in very small project area encompassing only the low-income area as a result. Such projects may not be attractive to applicants because in a low-income community, the “take rate” can be lower than in more well-to-do communities due to the affordability factor, and thus the “pay back” period to build the infrastructure may be quite long. Race requests a change to the PD that so long as a low-income area comprises 51% of the project area, this should suffice for the project to be categorized as “low income” and subject to high funding levels.

As to the proposed interpretation of the “location and accessibility of an area” phrase in Section 281(f)(13) (PD, at 20-21), the PD lists four characteristics. Projects meeting two of these listed characteristics will indicate a project meets the definition of a “remote” area which is how the PD interprets “location and accessibility of an area.” Race expresses some concern about the

third and fourth characteristics: “(3) The proposed project area is more than 10 miles from the nearest hospital” and “(4) The proposed project area is more than 10 miles from the nearest state or federal highway.” First, Race raises the issue that the way this criteria is worded raises an interpretation issue, namely “Is this the distance as the crow flies or by road miles?” Race would posit that this description should designate that this is by road miles, because the project area could be only 9 miles away from a hospital or highway, but there is a steep mountain with a twisty, curvy and treacherous road between the project area and the hospital or highway. Second, Race would expand the third characteristic to include not only a hospital, but add a rural health care clinic, an educational institution, and public library. As a result, Race suggests the third and fourth criteria listed at the top of 21 in the PD be modified to read:

“3. The proposed project area is more than 10 road miles from the nearest hospital, rural health care clinic, educational institution, and public library; and/or

4. The proposed project area is more than 10 road miles from the nearest state or federal highway.”

Section 2.9 Right of First Refusal. Race commends the PD on requiring that those filing Right of First Refusals (ROFR) must commit that *all households* in the area has the capacity to get minimum speeds of 10 Mbps download and 1 Mbps upload. (PD, at 41, third bullet point) Race also strongly supports the PD language that the ROFR may only be extended *once* for 180 days. Race also supports the language that sets forth the types of delays that may be acceptable, “permitting issues and environmental review, weather or other acts of God.” However, Race fears this does not go far enough. In prior comments, Race and other parties requested that the statement providing the evidence supporting the ROFR extension be required to be supported by an officer declaration. Further Race recommends that there should be fines or penalties should a CAF provider block out other providers from building in CAF areas with ROFRs and extensions, then not build the CAF eligible areas with no acceptable explanation. Race submits that these two requirements should be added to the ROFR section to minimize the possibility of anticompetitive action by incumbent providers as to ROFRs and extensions of the ROFR.

2.10 Treatment of CAF II Areas. Race strongly supports the new procedure set forth in Section 2.10.2 of the PD to annually collect data from incumbent providers that receive federal Connect America Funds (CAF) to report to the Commission on completed CAF II blocks, the census blocks with locations that the provider has elected not to build to, and the blocks the

provider has not yet determined whether to build. Having this data given to the Commission by January 15 of each year *if promptly included in the California Broadband Map* will give other providers like Race the time to review all eligible areas and locations not being built by incumbents and formulate CASF applications by April 1<sup>st</sup>. However, in an obvious drafting error, the language in the draft rules makes this new requirement discretionary instead of mandatory. See Appendix 1, Section 5.1, “Treatment of CAF II Areas” on page 9, where it says, “Providers *wishing to inform the Commission of their CAF deployment plans* must submit a letter by January 15<sup>th</sup> of each year to the Communications Division Director with a copy of the CASF distribution list, detailing the CAF II areas that have been completed and those that the provider is expressing its intent not to upgrade.” (Emphasis added.) Race strongly recommends that the Rule language be amended to match the decisional language in the PD: “Providers are required annually to inform the Commission of their CAF deployment plans, and must submit a letter by January 15<sup>th</sup> of each year to the Communications Division Director with a copy of the CASF distribution list, detailing the CAF II areas that have been completed and those that the provider is expressing its intent not to upgrade.”

2.12 Project Challenges. Race is grateful for the new rules (PD at 59) which address project challenges. Race commends the PD on ensuring timely challenges with clear language that late-filed challenges will be denied. Race suggest two minor changes. First, that a challenger submit the challenge no later than 21 calendar days “from notice of the application being served on the service list” instead of the current language which says the challenge is submitted 21 days “from the filing of the application.” Parties should have a full 21 days from actual notice of the application. Second, Race suggests a minor addition to add an end date by which challenges are timely dealt with by CASF Staff, for example 30-45 days, to ensure timely processing of challenges.

2.13 Minimum Performance Standards. Race has reviewed the Minimum Performance Standards discussed at Section 2.13 of the PD. As to the first one, Project Completion, Race has been fortunate to generally finish its CASF projects within the two-year timeframe, but there should be added language to grant some discretion where delays to the project end date were caused by factors outside the grantee’s control, such as unusually long permitting or environmental review, acts of God, adverse weather, etc. (similar to the ROFR extension list).

On speeds, Race is comfortable with the PD stating the requirement that a minimum of 10 Mbps download and 1 Mbps upload is guaranteed in order to comply with AB1665, but this element is greatly lacking in *that there is no incentive given to applicants who are willing to provide higher speeds*. Here is a chance for the Commission to show leadership on the disappointing 10/1 speed contained in AB1665. The FCC’s benchmark broadband speed is 25 Mbps download and 3 Mbps upload. In a recent November 20, 2018 blog, the current FCC Chairman has indicated his intention in a December 2018 Notice to raise the minimum broadband speed delivered to rural Americans via the Universal Service High Cost Fund up from 10 Mbps download/1 Mbps upload to 25 Mbps download and 3 Mbps upload speeds.<sup>1</sup> In light of this FCC action, this Commission should be equally bold to provide incentives to provide more comparable speeds between urban and rural areas while remaining faithful to the minimum speed mandated by AB1665. Race thus recommends that a plus factor be the speed of broadband service to the consumers when comparing applications for the same area. It would change the “Speed” bullet on page 60 of the PD to read: “Speeds: All households in the proposed project areas must be offered a broadband Internet service plan with speeds of at least 10 Mbps download and 1 Mbps upload, and preferences for higher speeds will be granted should there be competing applications.” (suggested language underlined)

On affordability, Race is pleased to see that the Commission will require an affordable plan be provided for low-income consumers. Race suggests that the rates of the plan be within a range of existing or past affordable plans in the state with no hidden fees or charges. Race would amend the “Affordability” bullet on page 60 to read “Affordability: All projects shall provide an affordable broadband plan for low-income customers, with rates in the range of existing or past affordable offers by California broadband providers with no hidden fees or charges.” (suggested language underlined)

2.14 Priority Communities. Race suggests that the list of priority communities for Regional Consortia regions be a prime focus of the annual Regional Consortia meetings with all stakeholders. The PD at Section 2.14.2 suggests that the Staff will develop a list of priority communities for broadband deployment for that consultation. Race suggests that the priority communities should emanate from the Regional Consortia as a result of its work with the local

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<sup>1</sup> “Third, we’re recognizing that rural Americans need and deserved high-quality services by increasing the target speeds for subsidized deployments from 10/1 Mbps to 25/3 Mbps.” <https://www.fcc.gov/news-events/blog/2018/11/20/fccs-thanksgiving-menu-5g-rural-broadband-and-stopping-unwanted>

leaders, providers and the community, which will then be brought to the Commission. Each county should be encouraged to have a list of prioritized communities that meet the statutory eligibility (i.e. unserved, speeds under 6 Mbps download and 1 Mbps upload).

2.16 CEQA Payment. Race agrees with the PD's finding on CEQA payments made directly by the Commission to the contractor following the award of the grant. In the bigger picture, however, many commenting parties noted that CEQA can be a source of great delay in the process. Race recommends that the PD be amended to direct the CD Staff to add additional Commission resources for faster CEQA review of projects in order to facilitate grants, and service to the public.

WHEREFORE, Race respectfully requests that the its changes to the Proposed Decision be made consistent with its comments above.

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