

**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)

**COMMENTS OF RACE TELECOMMUNICATIONS INC. (U-7060-C)
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, Race Telecommunications Inc. (U-7060-C) (Race) hereby timely files comments on Phase II of Rulemaking No. (R.) 12-10-012.

Race understands that broadband Internet access is essential to all Californians. It is Race’s company mission to provide advanced communications at an affordable price. Race’s work is therefore focused on bridging the Digital Divide and improving network connectivity across *all* of California, not just in prosperous urban settings. This is why Race’s projects focus on communities that large incumbent broadband carriers have long ignored -- low-income, disadvantaged, minority/non-English speaking, and rural and remote communities. Race is proud of its unique mission, which has been enabled by the creation of the CASF. So, at the outset, Race commends the Commission and its CASF Staff on its hard work to bring grants to unserved and underserved communities across our vast state. It is our firm belief that absent this CASF fund, these communities would not see broadband for another five to ten years, and in some place, never.

To date, Race has been awarded ten California Advanced Services Fund (CASF) grants to advance broadband access and adoption. The total households that are served by these ten grants is 15,850 households.¹ In fact Race holds the most CASF grants in the state. As a result,

¹ Race’s CASF Grants: San Bernardino (SB) County – Red Mountain & Gigafy Phelan (CASF grant \$29,667,320; Race funded \$19,77,213 in SB County); Kern County – Mojave Spaceport, Gigafy Boron, Gigafy High Desert & Gigafy Backus (CASF Grant \$18,755,890; Race funded \$10,559,744 in Kern County); Mono County – Mono County, Gigafy Mono & Gigafy North 395 (CASF Grant \$14,355,090; Race funded \$8,390,548 in Mono County); Gigafy Occidental – CASF grant \$7,687,016; Race funded \$3,294,435. All Projects Total CASF Grants: \$70,465,316; Total Race Funded \$42,022,940. Total Households: 15,850. Total Amount (CASF and Race):

Race has extensive experience with the CASF program. Race is pleased that the Commission is not only extending this important program with implementation of AB1665, but improving the program for administrative efficiency and reducing unnecessary burdens on applicants. Race will be honest and say that the CASF application process and going through the Commission process is very challenging for small ISPs who typically do not have any full time regulatory staff unlike the incumbent existing providers.

As an initial matter, Race expresses its disappointment over the passage of AB1665 (the Internet For All Act) with very changed provisions than the initial bill sponsored by the California Emerging Technology Fund (CETF). Originally AB1665 simply sought additional funds to achieve this Commission's Digital Divide infrastructure access goals of 98% coverage of the entire state (including to residents of public housing), and to fund a new broadband adoption program to assist getting our unconnected residents (mostly low-income and disadvantaged persons) connected to the Internet. Race applauded this effort because letting the CASF fund run out before the job was done would have been wrong.

However, what resulted in the final AB1665 Internet For All Act heavily favors the incumbent facilities-based providers by reserving the incumbents' huge geographic swathes of the state (Connect America Fund Phase II areas) until the end of 2020, which essentially blocks out from these huge areas independent Internet Service Providers like Race. Given the urgency of the Digital Divide issue for our state, this legislative result is distressing to Race. In our view, AB 1665 has morphed the original CASF program into a much less appealing program for anyone but the existing facilities-based incumbents, such as AT&T, Frontier, and other similar providers. But Race steadfastly declares that this setback is not going to stop Race from using the CASF program and being creative – simply because there is still much Digital Divide work to be done.

Race encourages the Commission to exercise its state leadership and take as aggressive steps as it is taking in the renewable energy and climate change arenas to reach the 98% deployment of broadband infrastructure goal and the 80% home broadband adoption goal. Smart grids, Smart Cities, autonomous vehicles, and other 21st century technologies all need ubiquitous broadband. Race supports the concept initiated by CETF to have the Commission and the

\$112,488,256. Race also holds a CPCN from the Commission for limited facilities-based and resold local exchange IntraLATA and InterLATA interexchange telephone service. D.08-01-009, in A.07-09-007 (issued 1/11/2008).

Regional Consortia convene all stakeholders to better collaborate on broadband projects, clarify the unserved and underserved areas remaining, and catalog existing public assets to provide broadband builds in a more coordinated and cost-effective manner. The Commission should lead this type of effort as a convener with as much attention and proactive work with other agencies as in the energy space.

Race further requests that the Commission ensure there is fairness in the program between ISPs of all sizes, so there is no gaming of the program by the incumbent facilities-based providers. Transparency and regular reporting to the Commission by the incumbent facilities-based providers will add much integrity to the process. By this, we mean that this Commission should take steps to ensure that incumbents providers do not block out independent ISPs from CAF II areas that they do not in fact intend to build out, by requiring the incumbents to report their build-out intentions to the Commission every six months in verified reports. With these verified reports, the Commission can mark as eligible for CASF grants areas in which the incumbents do not intend to build. Further, if an incumbent claimed it would build in a certain CAF II area, but then fails to do so, the Commission should impose a penalty or fine on the incumbent for blocking out CASF grants to that area for up to three years. We all know the ultimate losers were the residents of that area who were denied broadband service for all those years. The Commission should not allow this to happen; it holds the regulatory authority and tools to ensure it won't.

Further, the Commission should take aggressive efforts to improve the underlying data in its California Interactive Broadband Map to more accurately reflect the actual unserved and underserved residents. It is well known that the Form 477 data reported by the ISPs is overstated,² and prevents unserved residents from receiving CASF grants for their areas. The Commission should require additional more detailed ISP reporting of its service areas to improve the broadband map. More aggressive grants (including 100%) should be given for unserved areas in very remote areas and tribal lands where there is little chance an incumbent will ever tread.

² The FCC rules allow an incumbent to claim an entire Census Block Group is "served" if just one household receives broadband service. This results in many areas not receiving service but having their census block group showing as "served." This is extremely frustrating for these residents; the Commission should use its ground truthing methods like CalSPEED, surveys, or customer testimonials to allow residents to attest that they receive no broadband service.

Finally, the speeds adopted in AB1665 of 10 Mbps download and 1 Mbps upload are well below the FCC's national benchmark of 25 Mbps down and 3 Mbps up. As the home of the Silicon Valley, California should be reaching higher than the FCC benchmark, and setting goals for a gigabit economy. While 10 Mbps download and 1 Mbps upload may be adequate for residential usage, those speeds are not adequate for small and medium businesses, farming/ranch operations, local government, hospitals and health clinics, community anchor institutions, and emergency responders in unserved and underserved areas. The people of California deserve affordable and reliable broadband of world class speed, and it is the duty of this Commission as mandated by the Legislature to ensure that it happens quickly, fairly and with justice to all.

I. Infrastructure Grant Account Comments

Definition of "Eligible Project." Race requests edits to the overbroad proposed definition of "Eligible Project" areas in Section 1.3 Definitions on page 6 of Appendix C. This proposed definition of "Eligible Project" is "an area containing unserved households and that is not within a CAF II, ROFR or existing CASF project area. CAF II areas remain project eligible to the corresponding existing facilities-based provider to extend service within its CAF II area." However, AB1665 makes it clear that if an existing facilities-based carrier has notified the Commission before July 1, 2020 that it has completed its CAF deployment in the census block, an existing facilities-based broadband provider is eligible to apply for CASF funding to expand broadband service within the identified census blocks to homes that remain unserved by broadband service. Thus, Race requests the definition 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. This is consistent with goal of the program.

Proposed Application, Item 6, Project Eligibility. After the discussion that eligible projects must offer service at or above 10 Mbps downstream and 1 Mbps upstream, irrespective of technology, Race recommends that the Commission insert a sentence that acknowledges that the FCC minimum benchmark speeds for broadband at 25 Mbps downstream and 3 Mbps upstream, and higher speeds are necessary for many, such as home-based small businesses,

community anchor institutions, and emergency responders in the areas. In evaluating applications, those with faster speeds should be scored higher (this is consistent with past CASF practice).

Proposed Application, Item 9, Performance Bond Relief. The Staff has asked whether the performance bond requirement should be maintained, due to the difficulty of obtaining a surety bond, and burdens it places both on applicants and the Commission. Race believes that the performance bond does provide important protections for the CASF program, from new, inadequately funded entities entering the market. The sustainability of each CASF project is important to the integrity of the program, given that it is ratepayer dollars that are being used for the grant. Thus, Race supports some relief from the performance bond requirement for entities that have three years of financials from an operating business.

Proposed Application, Item 16, CEQA Attestation. Race supports the changes suggested by Staff on the CEQA attestation and process. Race agrees this will ensure that applicants have fully considered CEQA impacts, request adequate funding as a result, and result in fewer project delays and Staff time dealing with a naïve applicant.

Proposed Application, Item 14, Financial Qualifications. Race recommends that the “CPA audited” requirement be removed from the financial statements requirement. This incurs a high cost for which many applying companies are not prepared. Because the CASF application requirement is for three years of financial statements, it may require a company to have a CPA go back to do an audit for three years of the company’s business. Tax returns and financial statements should provide ample information for the Commission.

Proposed Expedited Ministerial Review for Low-Income Communities. Race strongly supports the proposal for expedited, ministerial review by Staff for CASF applications that meet three criteria: (1) the CASF applicant meets all eligibility requirements; (2) costs per household are below the CASF program average; and (3) the project serves low-income areas. Race has made the provision of broadband service to rural, low-income areas its specialty. Expedited grants for unserved areas is consistent with the goal of the program. Further, the neediest persons in those areas are the vulnerable low-income residents. Bringing service to unserved

areas that are also populated by low-income residents helps these areas obtain access to broadband service. Race provides low rates for low-income households who cannot afford the cost of urban retail rates to ensure digital equality. The Race entry package is \$25 for broadband speeds of 25 Mbps downstream and 25 Mbps upstream, with no data caps.³

Race disagrees with the third criteria of the proposed expedited ministerial review for low-income communities, however. “Low-income areas” are defined in the proposal in Section 1.3 “Definitions” as “areas defined by the median income within a Census Block Group having median income less than \$49,200.” By using the Census Block Group as the measured area, when actual CASF project areas can be quite small, the median income numbers can be skewed and can result in worthy projects for low-income communities not being eligible. For example, using the proposal’s low-income area criteria, Race’s past projects in Phelan, Crowley, Mono and North 395 would not qualify because they have many census blocks that fall below the \$49,200 level but a few census blocks fall well above and skew the median to be above the \$49,200. Yet if you visit the Race project areas, the majority of the project are low-income communities with many economic issues. Race therefore recommends that the California Median Household Income of \$63,783⁴ be used as the third criteria, and projects where the majority of census blocks fall below \$63,783 would qualify for expedited treatment. Race notes that in a past CASF decision, the Commission used a similar approach. In the Gigafy Occidental Resolution T-17524, the Commission determined that the project was not located in a low-income area by looking at the median household incomes of the four Census Block Groups of the project, and using as the yardstick of low-income status, the four-year average median income from 2010 to 2014 in California.⁵

Or if the Commission decides to support with the Staff proposal, as an alternative, Race suggests that the applicant have the flexibility to show that the majority of the census blocks

³ The following are Race’s broadband rates. Basic Broadband Rate: \$25/month, speed of 25 Mbps down and 25 Mbps up, with unlimited data. Gigafy Me Internet Rate: \$60/mo., speed of 1000 Mbps down and 1000 Mbps up, with unlimited data. Gigafy Me router: \$10/month. IP Phone: \$10/mo. with unlimited nationwide calling, and low international rates. Optional television service: \$95/mo. with 270+ channels. Optional \$15/DVR box. \$7 each additional standard box.

⁴ Here is a link to the CA Median Household Income (2016): <https://www.census.gov/quickfacts/CA>

⁵ See Resolution T-17524, Approval of Funding for the Grant Application of Race Telecommunications Inc. from the CASF in the Amount of \$7,687,016 for the Gigafy Occidental project, located in a CASF priority area in Sonoma County, issued August 25, 2016, at page 7 under “Low Income Areas”.

(51%) in the project area fall below the \$49,200 CBG median income level, and this should qualify it for expedited treatment.

Right of First Refusal, Section 1.9. The Commission should seek to identify with certainty and reliability unserved areas in order to reach the mandated 98% goal in each consortia region as soon as possible. It is important therefore that the annual Right of First Refusal process not be used by existing facilities-based providers to block independent ISPs like Race from applying for unserved areas just because they are in a CAF II area that the incumbent can decide to build out (or not) as late as 2020. Race asks that if an incumbent uses a Right of First Refusal, it not be extended more than once. Any extension should be based on evidence that real significant progress is being made and should be supported by an officer declaration under penalty of perjury. Race is concerned about the Staff suggestion that repeated extensions of time may be reasonable. The Legislature intended for a ROFR to protect an existing facilities-based provider only for imminent builds occurring in the next six months. That is all it should be used for, otherwise it will violate the clear language of AB1665.

Treatment of CAF II Areas, Section 1.10. If an existing facilities-based provider notifies the Commission it will not build in a CAF II area, Race agrees with CETF that the Commission should notify the CASF service list of this development, and impose a 90-day waiting period before CASF applications can be accepted for this released area so that the incumbent does not game the system and put in a CASF application for the area it just released.⁶ Independent ISPs should have the opportunity to prepare a competing bid to the existing facilities-based provider for the released area.

Race further requests that the Commission require the existing facilities-based provider to file verified construction reports every six months of its intended CAF II areas builds and areas in which it does not intend to build out, so that these latter areas may be promptly marked eligible for CASF grants by Staff on a rolling basis. Existing facilities-based providers should be required to report their updated construction plans every six months to the Commission under

⁶ This is not a far-fetched scenario. An existing facilities-based provider did this exact thing as to a California CAF II area in the last few months.

penalty of perjury. Any false statements in the reports should be subject to Commission Rule 1.1.

Submission and Selection Timelines. Section 1.11. At page 16 of Appendix C, Staff suggests an annual submission of CASF applications three months after annual ROFR determinations. Race objects to an annual submission as too rigid and resulting in more delayed broadband service to the public. Race urges the Commission retain its current method of accepting CASF infrastructure applications on a rolling basis, not on a set schedule.

Race observes that the current process used by the Staff to score the applications takes much too long. Race suggests streamlining the applications and the review process so CASF applications can be granted no later than six months from filing. On average, the time to process a CASF application is over a year, and much more (years) if there are challenges. Race suggests a far simpler review take place, with the largest scale applications reaching low-income and disadvantaged communities being considered first, but in no event having application review extend beyond six months. Challengers must file a challenge within the mandated timeframe (21 days) and no late challenges should ever be considered, even if the project is amended.

In addition, competing applications for the same or overlapping project areas should be rejected if proffered after the first service of an application summary description by the applicant on the CASF distribution list. We emphasize that once an application is filed for a particular area, should a second applicant file for the same or overlapping project area, it should be rejected, or at minimum held in abeyance until the first application is processed.

Finally, Race requests that the Commission continue to process pending and new CASF infrastructure grants during the Phase II comment/reply comment process, given the Assigned Commissioner's Scoping Memo lists a final decision on the Infrastructure Program in end of the year 2018. If the Commission wants to pair CASF projects with CAF II projects, the applicants need to have final rules as soon as possible in order to prepare applications and file in mid-2019 since the FCC has a 2020 deadline for CAF II builds. With these looming federal deadline, it is important that the CASF application process be streamlined, a much simpler review process adopted, and a strict end date adhered to as to challenges.

Posting of Applications, Section 1.12. Race requests that the CASF rules be clarified that the posting of applications does not in any way create a challenge period. See our comments immediately below on project challenges for rationale.

Project Challenges, Section 1.13. Regarding the project challenge implementation, Race appreciates the opportunity to express that the current proposal of a 21-calendar day challenge is acceptable, *but only if there is strict adherence to it.* Race would like to express its considerable frustration that in the past, late challenges (even multiple late challenges) to applications have been allowed in the CASF program, contrary to the CASF program rules and contrary to the traditional practice and procedure of this Commission. These late challenges have been to the detriment of the applicant, causing additional delay, time-consuming new requests for information by the CASF Staff to respond to a late challenger, and often removal of households from the project due to late challenges. The removal of households has often meant the application was re-noticed to the CASF service list, only to bring new challenges which produce further delay and increased cost to the applicant. Every removal of households causes applicant work to readjust the project financials, redo the network design, and in some cases to renegotiate the build with our contractors. This situation frankly discouraged many applicants from participating in the program. Many independent ISPs are small companies and cannot afford full time regulatory staff like the incumbents. For these reasons, Race strongly urges the Commission to be very clear that there is only one challenge period and no late challenges will be entertained. Finally, Race requests that there be a deadline by which the challenge report must go to the CD Director; Race suggests 20 days. Finally there should be a deadline established for when the challenge will be resolved; Race suggests 30 days after the challenge report deadline.

Payment, Section 1.18. Race has reviewed the Payment section which lays out the existing progress billing basis and a new alternative which is on a deliverable-basis. Race has been successful operating under the current progress billing basis rules, and it does not feel that the alternative deliverable-basis rule is necessary. Should it be adopted, Race requests that the current progress billing basis be kept in addition for past grantees who prefer it.

Regional Broadband Consortia. Race endorses CETF's recommendation that the Regional Consortia be asked to inventory all public assets that can be used by any Internet Service Provider on an open and competitive basis for CASF applications. These public assets may be towers, rights of ways, buildings where equipment may be co-located, etc. Race thinks this could assist any ISP in preparing a CASF application and facilitating projects for unserved areas.

Line Extensions. Race agrees with the comments of CETF on the proposed line extension program. The Commission should require applicants to show that there's no better alternative and it is a last resort to bring broadband service to the line extension applicant. The Commission also should determine that there is no larger project that would bring broadband to that line extension applicant in the foreseeable future (one year) before approving it. Race agrees with CETF that there should be a fair sharing of cost for the line extension, and it should be 25% paid by the applicant (unless the applicant has low-income status). This 25% matching payment by the line extension applicant will help deter fraud in the program. Further, the applicant will put some "skin in the game." Otherwise, Race is concerned that the conduit will be paid for by the CASF Line Extension program and then it is turned around by the applicant and used to provide electricity, for example.

In terms of a cap on the line extension amount, Race suggests that a reasonable cap on a wireless drop be \$300 maximum, a cap on an aerial drop would be \$1,000 maximum, and that the cap on an underground drop be \$3,000 maximum. Similar to the Infrastructure program, Race requests that both the paperwork and reimbursement process be kept simple. There should of course be follow-up by Commission Staff to ensure the line extension construction actually took place. Any fraud or abuse of the program should be prosecuted, and the money returned to the CASF account.

WHEREFORE, Race respectfully requests the Commission amend its CASF proposals contained in Appendix C to be in accord with its above comments. Race appreciates the Commission's thoughtful suggestions on the program and urges the Commission to retain the CASF program to bridge the Digital Divide, and to be proactive in its work.

Respectfully submitted,

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