

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 ALJ's Ruling on Eligibility For and Prioritization of
Broadband Infrastructure Funds from the California Advanced Services Fund**

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Pursuant an Administrative Law Judge's Ruling Requesting Comments on the Eligibility for and Prioritization of Broadband Infrastructure Funds from the California Advanced Services Fund (ALJ Ruling) dated September 5, 2018, in the above-referenced docket, Race Telecommunications Inc. (Race) hereby provides comments on the questions posed for comment in the ALJ Ruling.

The company mission of Race is to provide advanced communications at an affordable price. Race understands that broadband Internet access is essential to all Californians. Race's ten CASF grants are for projects focus on communities that large incumbent broadband providers have not served well -- low-income, disadvantaged, minority/non-English speaking, and rural and remote communities. Race is proud of its work to bridge the Digital Divide in our state and improve network connectivity across all of California, not just urban settings. With this background in mind, Race comments on the questions posed in the ALJ Ruling.

- 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)4?**
 - 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?**

Race is pleased that in Assembly Bill (AB) 1665 the Legislature recognized that providing broadband to the remaining unserved broadband areas in the state is very costly and may require

subsidy levels above the 60% to 70% levels that CASF grants have historically allowed. Race reads Public Utilities Code 281(f) (13) as allowing the Commission to provide funding up to 100% funding on a case-by-case basis. Section 281(f)(13) gives the Commission three factors it must consider:

- (1) the location and accessibility of the area,
- (2) the existence of communications facilities that may be upgraded to deploy broadband, and
- (3) whether the project makes a significant contribution to achievement of the program goal.

This section is also very clear that other factors may be added by the Commission at its discretion.

On the first factor, Race interprets “location” to mean where the project is located. Because the focus of AB1665 is provide CASF grant funding for areas “unserved” by any broadband provider at the minimum broadband speeds defined by the Commission, Race interprets the language to mean a project must be in a location in an eligible area that is “unserved” on the current California Interactive Broadband Map (California Broadband Map). Race interprets “accessibility of the area” to mean “capable of being reached” using the most applicable Merriam Webster definition¹. Thus, Race proposes that the first factor to be considered for funding levels is whether the project serves an eligible “unserved area” according to the current California Broadband Map at minimum broadband speeds mandated by the Commission, and that the project location is capable of being connected physically to the Internet to provide broadband. In the context of the statute’s language “the location and accessibility of the area,” Race does not think “accessibility” was used in the context of other Merriam-Webster definitions, such as “capable of being used or seen,” “capable of being understood or appreciated,” “capable of being influenced,” or “easily used or accessed by people with disabilities : adapted for use by people with disabilities.”

On the second factor, the “existence of communications facilities that may be upgraded to deploy broadband,” Race recommends it be interpreted as any communications facilities of any provider that could be upgraded to provide minimum broadband speeds as defined by the Commission. These facilities may belong to any communications provider, such as incumbents (e.g. PacBell/AT&T, Frontier Communications, rural telephone companies, cable companies or rural cable companies that offer broadband services) or by wireline or wireless independent Internet service providers. The applicant must actually use some of these preexisting communications facilities otherwise the additional funding based on this as a factor makes no sense. *Further, Race argues that the impact must*

¹ <https://www.merriam-webster.com/dictionary/accessible>

be that the cost of the project is thus lowered in order for this to be any kind of project benefit that merits a higher funding level.

Race points out that Section 281(f)(1) makes it clear that CASF grants shall be given on a “technology-neutral basis, including wireline and wireless technology.” Yet this “existence of communications facilities” factor favors grants in areas where there are some basic communications facilities that are upgradeable, as opposed to a “greenfield” situation where no communications facilities exist at all. This factor seems contrary to the overarching AB1665 goal set forth in Section 281(b)(1)(A): “The goal of the program is, no later than December 31 2022, to approve funding for infrastructure projects that will provide broadband access to no less than 98% of California households in each consortia region. . . .” Thus the existence of upgradeable communications facilities should be a minor factor, and only relevant if the applicant proposes to upgrade those facilities and the usage of such facilities in fact *decreases the project cost*. While the existence of upgradeable communications facilities may reduce the cost of the project to some degree, given that the goal is to deliver broadband service to nearly all Californians, this factor should not be looked at in isolation but in conjunction with others, particularly the third factor. The reason is clear: Californians who live in unserved areas *with no existing communications facilities at all* would be the last to benefit from the CASF program, which is contrary to the statutory goal of 98% coverage.

Race find it important that the Legislature included the third factor which is whether the project makes *a significant contribution to achievement of the program goal (98% coverage)*. Race proposes that the Commission interpret this factor as requiring the applicant to (1) serve all of an unserved area where there are households, anchor institutions (e.g. schools, community colleges, universities/colleges, public health care providers, hospitals, public libraries, emergency responders, government agencies, community centers), businesses and working farms, and (2) agree to serve every household or business in the project area. This will ensure there is no “cherry picking” by a CASF applicant of high or middle income areas, versus low-income or very rural/remote areas in unserved areas.

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?"

Race does not recommend an approach where a binary number of households constitutes a "significant contribution." Given the statutory goal of 98% coverage, this type of approach makes no sense since it is near ubiquitous coverage that is required by the statutory goal. Rather, Race suggests the Commission consider whether the project area contains any priority areas designated by CASF staff or by the Regional Consortia after a Commission-led consultation process with all stakeholders in a region. The Commission could also consider how many unserved households (as verified by any evidence that the households are unserved including CalSPEED results and consumer surveys) are contained in the priority area.

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.**

Section 281(f)(13) clearly authorizes the Commission to use other criteria, and it is reasonable for the Commission to use the three statutory factors plus other factors to potentially bring a funding level above a base level² up to a maximum of 100% funding. It is not necessary for the percentages to add up to 100% in our view. There could be multiple factors that potentially raise the funding above a baseline. Race recommends these additional factors: (1) a project scales close to the 98% coverage goal in the project area;³ (2) the project will serve a low-income communities (defined as those below

² Race suggests the base level be 80% as we discuss below.

³ As set forth in Race's prior Reply Comments on Phase II Issues, filed May 1, 2018 (Race Reply Comments), at page 2, Race suggests that 100% funding should be reserved for projects that scale close to 98% goal in the project area, and that serve low-income communities (defined as below the California median income) or other disadvantaged communities (non-English speaking, minority, seniors, people with disabilities, communities with

the California Median Household Income of \$63,784), a disadvantaged community, or an unconnected anchor institution such as school, library, public health care facility such as a hospital or clinic, or an unconnected emergency responder or other public safety entity (e.g. CalFIRE facility); (4) the project will offer significantly higher speeds than mandated by AB1665 (25 Mbps. download or faster for residential and 1 Gbps. download for commercial/anchor institutions); and (5) the applicant's financials for the project show it will not break even after seven years of operation.⁴

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?**

First, on the issue of the funding range, in its May 1, 2018 Reply Comments filed in this docket, Race supported the Central Coast Broadband Consortium which suggested that the new base funding for CASF grants be 80% of project costs (up from the historical 60% to 70% funding range). Race supports an 80% baseline because the costs of serving unserved areas is much higher due to the fact that these areas generally are more rural or remote, harder to serve, and are generally far from middle mile facilities and Internet Points of Presence. Thus the costs to bring broadband service to unserved areas is much higher than bringing it to underserved areas where there may be some interconnection and middle mile nearby (although such interconnection and middle mile may not be available to the applicant, however). Overall, Race contends that having CASF applicants provide a 20% match will help prevent companies with little network experience in rural and remote areas from applying and wasting scarce program dollars and the Commission's resources.

Second, having said that, should a specific project achieve some key objectives consistent with the three factors and other important factors set forth by the Commission, Race thinks it reasonable for the funding to go above 80%, but this should be an unusual occurrence and not routine. The

low-income levels such as farm workers, etc.) as identified in the annual broadband survey by the California Emerging Technology Fund (CETF).

⁴ Race previously suggested that 100% funding be reserved for priority areas of a Regional Consortia where the CASF applicant's financials show it will not break even after 7 years of operation. Comments of Race Telecommunications, Inc. (U-7060-C) on Assigned Commissioner Ruling on Eligibility for and Prioritization of CASF Broadband Infrastructure Funds, filed Aug. 8, 2018, at 4 (Race August 8 Comments).

Commission should grant 100% full funding grants only in exceptional cases for projects that meet at least three or more of the factors.

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?**

Race is neutral on whether the Commission should *require* CASF grantees to offer an affordable broadband service plan to receive CASF funding. Race has some jurisdictional concerns about the Commission setting and regulating interstate broadband rates, even if it is tied to a voluntary state infrastructure program. Race *voluntarily* offers an affordable low-income plan to its customers (\$25/month for symmetrical speeds of 25 Megabits per second) which has been well-received by our customers. In order to help low-income households connect to the Internet at affordable rates and increase broadband adoption in the state, it is meritorious to provide incentives for broadband providers to offer low income plans. Race suggests that the best way would be for the Commission to establish a preference would be given to applicants that propose a low-income plan in the scoring criteria or in the minimum performance standards. Finally, Race agrees with CETF's recommendation that for incumbents that have voluntary affordable broadband offers due to past mergers and consolidations, it would be appropriate for the Commission as a continuing public interest obligation to require continuation of such existing affordable offers for an additional time period of 2-5 years should the incumbent receive CASF grants.

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).**

Race would find a minimum performance requirement acceptable but only with some important changes. First, Race supports a commitment to serve all households in the proposed project area, because this goes directly to the statutory goal of 98% and prevents cherry-picking of wealthier areas over low-income and high cost areas. Second, on the 10 Mbps./1 Mbps. minimum speed, Race understands that this is the minimum speed mandated by AB1665 but strongly recommends that a preference be granted or a higher funding level granted if significantly higher speeds (e.g. 25 or 50 Mbps. and up) are offered and/or an anchor institution gains connectivity higher speeds (e.g. 1 gigabit per second speed) in the project area. Third, Race supports a latency requirement, which is important to ensure quality service. Fourth, Race would retain the time to completion at two years, given that permitting and CEQA/NEPA reviews can cause unexpected significant delays. Fifth, Race has not considered the issue of a data cap before, but could support its imposition along with latency requirements as part of the ministerial review minimum requirements. In looking at data caps, one should look at the lowest data caps afforded by California broadband companies and ensure the data cap is at minimum at a level reasonably comparable to urban areas. As noted above in a prior question, Race has jurisdictional concerns about the Commission requiring certain types of rate plans for Internet services. However, Race suggests that the offer of an affordable broadband plan for

low-income persons for at least some minimum time period (example, 2-5 years) be a preference in scoring, not a requirement. Or that an affordable offer be part of the ministerial review minimum requirements. Finally, Race asks if a specific time window will be set up for any competing applications by independent ISPs to be filed. Race urges the Commission to enforce the deadline imposed strictly.

- 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.**

Maximum Funding Level: 100%	
Baseline for Eligible Project: 60% of total construction costs	
Presence of Dial-up Only: + 40%	
Low Income: Up to + 40%	
<ul style="list-style-type: none"> ● Median Household Income for community in application is less than \$49,200. ● Applicant offers an affordable entry-level product to low-income customers. 	
PU Code Sec 281 (f)(13) Requirement: + 10% per criterion, up to + 20%	
<ul style="list-style-type: none"> ● Inaccessible Location ● Uses Existing Infrastructure ● Makes a Significant Contribution to the Program 	
Ministerial Process	Resolution Process
Maximum Cost/HH <ul style="list-style-type: none"> ● \$4,000 - 8,000 for wireline ● \$1,500 for fixed wireless 	Does not meet all criteria under Ministerial Process Amounts, up to 100%, by commission determination
Maximum Grant Amount: \$5,000,000	
Must be CEQA-exempt, or approval letter must state that authorization to construct and release funds will be provided in a forthcoming resolution.	

As set forth above, Race proposes changing the baseline to 80% from 60% due to the fact that unserved projects are much more costly than underserved projects, usually due to rural and remote nature of these areas plus the lack of middle mile and backhaul facilities. Because AB1665 now limits

CASF grants until 2020 to unserved areas, this makes good sense. The Legislature also gave specific blessing to the Commission funding up to 100% so long as factors are met as noted in the ALJ Ruling.

Race proposes to remove Presence of Dial-Up because only unserved areas are allowed by AB1665 until 2020 and so giving 100% for all unserved areas does not make any logical sense.

Race proposes to adjust Low Income to +20 (not +40%), due to baseline move from 60% to 80%.

Race strongly recommends changing the Median Household Income factor under Low Income to the California Median Household Income of \$63,784. (See Race May 1st Reply Comments, at 4-5). In its May 1st Reply Comments, Race argued that \$49,200 is too low and that a better definition is the California Median Household income of \$63,784. There are often higher income areas mixed in with low-income areas and a showing of 51% of census blocks having low-income status should suffice. This is also based on Race's experience building ten CASF projects serving primarily low income and rural/remote communities. Using a \$49,200 factor would have failed to give any but one of Race's ten projects an advantage.

Under Low Income, Race suggests the language be changed to "Applicant voluntarily offers an affordable entry level product to low-income customers for a certain time period (2-5 years)." Alternatively, Race suggests the affordable offer, latency and data caps be made part of the Ministerial Process requirements. Further the Commission should consider mandating a range for affordable broadband monthly rate based on current offers of providers (e.g. \$10-\$25/month), with no credit checks, no monthly router fee, and free installation.

Under "PU Code Section 281(f)(13) Requirement" (which should have a more descriptive name because the current one will be confusing to applicants), Race proposes +10. Race also proposes to provide more information per sub-criteria:

"Inaccessible Location (e.g. distance from middle mile, Points of Presence, and interconnection, very rural or remote, tribal lands)";

"Uses Existing Infrastructure Which Results in Lower Costs Per Household than CASF Average for Similar Projects";

"Makes a Significant Contribution to Program Goal of 98% Connectivity Per Region (e.g. Applicant agrees to serve every household in the project area if service is requested).

Further, as set forth above, Race recommends these additional factors: (1) a project scales close to the 98% coverage goal in the project area;⁵ (2) the project will serve a low-income communities (defined as those below the California Median Household Income of \$63,784), a disadvantaged community, or an unconnected anchor institution such as school, library, public health care facility such as a hospital or clinic, or an unconnected emergency responder or other public safety entity (e.g. CalFIRE facility); (4) the project will offer significantly higher speeds than mandated by AB1665 (25 Mbps. download or higher for residential and 1 Gbps. for commercial/anchor institutions); and (5) the applicant’s financials for the project show it will not break even after seven years of operation.

Race proposes the Ministerial Process Maximum Grant Amount be made much higher (e.g. \$10-20 million) in order for projects to be as large as possible to reach the regional 98% goal, and not artificially limit the size of the project just to obtain faster ministerial approvals. By placing the Ministerial Process Maximum Grant amount at \$5 million, it encourages small “cherry picking” applications instead of larger applications covering all the unserved areas that goes towards the mandated 98% coverage goal.

As noted above, Race would add as Ministerial Review requirements, the data cap, latency and broadband speed of at least 25 Mbps. download and 3 Mbps. upload⁶ in order to achieve these policy goals if the Commission believes them to be important.

Race requests that the Commission commit that CASF ministerial grants go out in six months from application completion date and non-ministerial applications be granted by the Commission in 9-12 months from application completion date. This will add more certainty to the process, particularly relating to financing.

⁵ As set forth in Race’s prior Reply Comments on Phase II Issues, filed May 1, 2018 (Race Reply Comments), at page 2, Race suggests that 100% funding should be reserved for projects that scale close to 98% goal in the project area, and that serve low-income communities (defined as below the California median income) or other disadvantaged communities (non-English speaking, minority, seniors, people with disabilities, communities with low-income levels such as farm workers, etc.) as identified in the annual broadband survey by the California Emerging Technology Fund (CETF).

⁶ This is the FCC’s benchmark broadband speeds.

- 4) *Should the Commission limit a CASF grantee's Administrative Expenses to 15 percent of total project costs?*
- a. **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?**
 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?**

Race supports a 15% cap on administrative expenses, but there should be leeway in an extraordinary circumstance where a project has something unusual or very unexpected occur that drives up administrative expenses a little higher (maximum 20%).

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

As to question 5.a., Race interprets AB1665 to require an incumbent to use its CAF funds first to build out as the households for which the incumbent accepted CAF funds. For additional unserved households in the census block, the incumbent may apply for additional CASF funding before July 1, 2020. If the incumbent does not intend to build out the other households, it should be required to notify the Commission of this in a timely manner and that census block and those households should be eligible for CASF funding by any provider. In addition, Race agrees with the example in question 5.a.1. The CASF program should never fund more than the total sum of households in a census block, otherwise there would be double funding.

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.)**

Race opposes allowing satellite providers from being treated as an “existing facilities-based provider” unless it meets all minimum speed criteria including the 100 ms latency requirement. At present, it is Race’s understanding that satellite providers cannot meet those requirements. Further, terrain, foliage, weather, etc. may impact broadband service from satellite providers.

- 2. If a satellite provider is an existing facility-based provider, should the Commission revise CASF rules 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.)**

Race opposes including satellite service in the CASF program unless it can be shown that the provided service meets the minimum broadband speed and latency requirements consistently, and it is not degraded by terrain, foliage and weather.

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.);**

Race is willing to list types of planned equipment including miles of planned fiber, Central Offices to be used, number of remote terminals/fiber huts/wireless towers to be build, and if an IRU is used, but wants to emphasize these would be good faith estimates. Further Race notes that it has some agreements with equipment vendors to keep pricing confidential. As a

result, Race opposes listing equipment by quantity and price otherwise it would force Race to violate these vendor agreements.

- **Estimated breakdown of aerial and underground installation and if the poles or conduits are already in place; and**

Race is willing to provide an estimated breakdown of aerial and underground installation by footage, and if the poles or conduits are already in place. On these estimates, Race objects to providing quantities and pricing due to agreements it has with equipment vendors to keep their pricing agreements confidential.

- **Estimated construction timeline.**

Race opposes this requirement, because Race does not establish construction timelines until after engineering is performed (which typically happens after the CASF grant). This timeline is done after the grant because aspects like weather, equipment availability, contractor availability impact the construction schedule.

Race respectfully requests that the new CASF rules on Infrastructure reflect its comments set forth herein and in its prior comments and reply comments in Phase II.

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