

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

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| 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 THE RACE TELECOMMUNICATIONS, INC. (U-7060-C)
ON ASSIGNED COMMISSIONER RULING ON ELIGIBILITY FOR
AND PRIORITIZATION OF CASF BROADBAND INFRASTRUCTURE FUNDS**

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Pursuant to Rule 6.3(d) of the Commission’s Rules of Practice and Procedure, the schedule set forth in the Assigned Commissioner Ruling Setting Workshops and Seeking Comment on Eligibility For and Prioritization of Broadband Infrastructure Funds from the California Advanced Services Fund (“ACR”) issued July 11, 2018 and the emailed ruling on July 26, 2018 by Administrative Law Judge Anthony Colbert extending the response date to August 8, 2018 in the above-referenced proceeding, Race Telecommunications, Inc. (“Race”) hereby timely files comments on the questions raised in the ACR and an additional question on community prioritization raised at the July 25, 2018 Sacramento California Advanced Services Fund (“CASF”) Infrastructure Workshop (“Workshop”).

In its initial Phase II Comments, Race noted that it has received ten CASF grants to date and holds a strong interest in the viability of this program in order to bring state-of-the-art broadband systems to rural and remote areas lacking broadband.

I. Eligibility and Challenge Process for CASF Grants

Question 1.a. Currently, ineligible census blocks are largely determined by a service provider’s claim(s) of serving households within such census blocks and information indicating subscriptions within these census blocks. However, not all households within such census blocks may have broadband internet access service (broadband service) available to them. Given the potential overstatement of ubiquitous availability within census blocks, should a census block only be CASF-eligible if the subscription rate within that census block is less than 40% (figure from July Workshop) of all households? We propose that a census block is considered served, if 40% (per July Workshop) of households in that block subscribe to wireline or fixed wireless Internet service.

What should the CASF challenge process look like? Which trigger(s) should be used to start the challenge process for a CASF application? Which trigger(s) should be used to end the challenge

process for a CASF application? Should the Commission create a single definitive list of CASF-eligible census blocks and a pre-application eligibility-map challenge process, as AT&T proposes? (See Opening Comments of AT&T on Phase II Staff Proposal, filed April 16, 2018, pp. 9-11).

Question 1.b. What should the challenger have to prove (household subscription rate and broadband service speed) during the challenge process? What information should be required of the challengers to an application, other than what is currently proposed in the Staff Proposal? What information should be required of challengers to determine eligibility as indicated on the California Interactive Broadband Availability Map (as proposed by AT&T)? Could such a pre-application eligibility map challenge partially or entirely replace the post-application challenge? If yes, explain. Is the 21-day staff proposed challenge window timeline and challenge criteria also sufficient for the eligibility-map challenge process? Should the challenges vary by technology? (e.g., should the burden of proof for a fixed wireless Internet service provider submitting a challenge be different than that of a wireline provider?) Why or why not?

First, Race is pleased that the Commission is identifying one of the biggest problems with the current California Interactive Broadband Availability Map (“California Broadband Map”), which is the overstatement of actual broadband coverage. If one household is served in a census block, a broadband provider is allowed to mark the entire census block as “served” and the census block is then ineligible for CASF funding. This hurts the residents who live in that census block but cannot obtain any Internet service at broadband speeds. Race agrees that a primary and worthy goal of the Commission is to find a way to resolve this problem with the goal of identifying truly unserved areas in order to make them CASF-eligible.

The best way to resolve the problem is to first require service providers to provide more granular data to show what areas they are actually serving within particularly census blocks, and then marking unserved areas as eligible on the California Broadband Map. The Commission has the authority to require this information, particularly in light of AB1665 which requires the Commission to achieve 98% broadband coverage in each region. If in fact a census block has some “served” areas and some “unserved” areas, the Commission can use smaller geographic areas than census blocks for more granular funding of actual unserved areas with CASF funds.

The Staff proposal to use a lower than 40% subscription level as a proxy for potential “unserved status” initially seemed attractive to Race. With a strict challenge period (in the range of 14 to 21 days) that is adhered to by the Commission, it may be a good way to fill in the unserved areas in census blocks marked “served” by a provider. In such a scenario, a challenger should have to provide: street/address level data of the upgraded households, as well as engineering drawings

that show the path of the upgrade, drop and/or location taps, and location of active equipment so the end result is that the Commission staff is able to calculate the exact distance and speed capable to that location. The burden should be the same for both wireline and wireless, anyone servicing an area should know down to the address of what they can provide to that location.

However, after thinking through a subscription proxy proposal, Race realized that it shares the concerns of CETF that lack of a subscription (also known as lack of home broadband “adoption”) can be due to other factors, the primary one being affordability, but also age, income level, disability, or being a non-ESL household. Given that, it seems that this proposal of using low subscription as a proxy could just end up being a nightmare of challenges for the CASF applicant who applies in good faith for what is represented to be an eligible CASF area after doing all the engineering work for a project. After the CASF application is filed, Race fears that all manners of challenges will roll in for any actually served areas in the project area, and then the applicant has to pay to redo all the engineering work to remove any served areas after a challenge period. This kind of scenario may end up with a project map that looks like Swiss cheese and thus the project is less financially viable.

Regarding the AT&T Proposal to establish a single definitive list of CASF-eligible census blocks and a pre-application eligibility map challenge process, Race’s first question is how are these CASF-eligible census blocks to be offered determined? If these are just the currently “unserved” areas that exclude CAF II areas and all census blocks that a provider has marked served, this is a very limited group of census blocks. This effort would only be worth doing if the CAF II providers promptly indicate to the Commission what locations in each census blocks they intend to build out with CAF II funds, and release the rest of the CAF II areas that they do not intend to build out. Further, should the Staff undertake efforts in priority areas designated by the Regional Consortia to determine what parts of a CAF II census blocks are truly served and parsing out some of the CAF II census block as “unserved” and therefore CASF-eligible, this could make such an effort worthwhile. Otherwise, Race believes the current rolling application process works fine at present.

As discussed at the July Workshop, the Staff pointed out that the number of FCC Connect America Fund II (CAF II) locations (which can be residences or businesses) are “high cost” locations. In most cases, the CAF II funded locations do not include all unconnected residences

in a CAF II census block. Race urges the Commission to provide incentives for any broadband provider to build out to 98% of the households in the census block, particularly if the CAF II provider failed to build to all of the residential households in the census block. For example, if after a CAF II build, if there are still unconnected residential households in that census block, any unconnected households should be declared CASF eligible to any provider and indicated as such on the California Broadband Map.

II. Process for Prioritizing Projects and Areas to Support

Question from July 25, 2018 Workshop: How should the CPUC identify priority communities? What treatment should the CPUC afford to applications proposing to serve these communities?

At the July Workshop, the Staff presented how it scored two recent projects for Desert Shores and Lytle Creek, under existing criteria from the CASF rules and taking in to consideration changes from AB1665. Race supports the CASF Staff approach as expressed in both of these resolutions as voted. Race recommends that 100% funding be reserved for a priority area of a Regional Consortia where the applicant's financials show it will not break even after 7 years of operation. In the Desert Shores and Lytle Creek situations, the applicant did show it would turn a profit in year five, and so Race concurs with the Staff's recommendation (approved by the Commission) to not allow a full 100% CASF grant. Race could foresee circumstances where a 100% grant is appropriate. If an unserved area is prioritized after a Regional Consortia and stakeholder meeting by the Commission, and the financials show it will not break even after seven years, then this should be considered by the Commission for a 100% grant using the types of criteria it used in the Desert Shores and Lytle Creek resolutions, as enhanced by AB1665 priorities such as a project that commits to 98% coverage of the unserved households.

Question 2a. Which census blocks, census tracts or communities should be prioritized by the Commission? Two examples of previous approaches to prioritization include: Resolution T-17443 (approved by Commission 6/26/14) and the High Impact Analysis developed by Staff and included in the Supporting Materials for the May 25, 2017 CD Staff Workshop on CASF Reform.⁵ Should the Commission use methods similar to this going forward?

Identification of priority communities should begin with the Commission leading stakeholder meetings for each region to gather the providers, Regional Consortia, local/Tribal government leaders, and other stakeholders to inventory local assets, aggregate demand, get a transparent view of any CAF II builds as to all locations, identify middle mile facilities, and then prioritize the most urgent and cost-effective projects for each region to achieve 98% coverage. This

should happen on an annual basis. This approach is consistent with the AB1665 Legislative Counsel Digest language, at 2: “This bill would require the commission to identify unserved areas and delineate the areas in the annual reports. The bill would require the commission to consult regional consortia, stakeholders, and consumers regarding priority areas and cost-effective strategies to achieve the broadband access goal through public workshops conducted at least annually no later than April 30 of each year.”

Question 2.b. Do parties have additional communities to suggest as priorities? If so, please follow instructions for submitting those priorities in Appendix A.

Race encourages the Commission to convene the Regional Consortia, stakeholders, providers and local leaders in each region to discuss communities to prioritize in order to reach the 98% goal, and then to publish these priority areas either in a list or on the California Broadband Map.

Question 2.c. In order to ensure that priority projects get developed and funded, how should the Commission treat these areas identified as priorities?

Priority areas/projects should be publicized by the Commission after the stakeholder meetings are completed by calling a workshop for all broadband providers in the state to come view all the priority areas. These priority areas should get expedited treatment (grants after 4-6 months) as to CASF applications, Staff approvals, and higher funding percentages (90%-100%).

Question 2.c.i. Should these priority areas be eligible for expedited review?

CASF applications for these prioritized projects should be given expedited treatment with a goal of a grant in 4-6 months. Further, the Commission should delegate authority to the Communications Division for approvals within certain Commission set parameters, such as maximum dollar size of project (e.g. \$5 million), and the existence of delineated project characteristics such as low-income, disadvantaged, very remote, Tribal, or covering an important set of anchor institutions for public safety issues (for example, coverage of CalFIRE stations to enhance wildfire monitoring and data collection).

Question 2.c.ii. Should these priority areas receive higher funding levels or percentages, perhaps under the argument that they contribute significantly to the program goal, one of the rationale for additional funding in statute?

Race recommends that priority projects identified by the regional consortia as confirmed by the Commission CASF Staff should be eligible for enhanced grants above the traditional 60%-70% levels. The prior levels were for underserved and unserved areas. Since AB1665 currently provides that CASF funds may only be used for *unserved* areas which in general are more expensive and harder to serve due to remoteness of lack of middle mile/backhaul facilities, Race recommends that the grants be at the 90% level, and that 100% grants be reserved for priority applications, where factors such as the following are present: the provider agrees to serve 98% of the unserved households at served speeds, the provider will connect anchor institutions, and there is no financial break even for seven years for the project.

III. Providing Access to Broadband Service to Areas Adjacent to CAF II Areas

1. *Question 3. The number of eligible CAF II locations exceeds the number of required locations to which CAF II providers must offer service. Many census blocks may have more households than CAF II eligible locations, meaning that some households will not benefit. How can the Commission incentivize CAF II providers to build beyond their commitments to the Federal Communications Commission? In order to incentivize CAF II providers to deploy throughout the community and in areas adjacent to CAF II areas, should the Commission:*

Race applauds the Commission's recognition that the CAF II federal funding does not cover all locations (both households and businesses) in a CAF II area. Should the federal funding be inadequate to fund upgrades to broadband speeds for the entire CAF II area, the remaining area should be marked eligible on the California Broadband Map as soon as the CAF II provider informs the Commission it is not going to upgrade those households. CAF II providers should not be given any further incentives from the CASF fund to build out those areas. Any broadband provider should have the ability on equal footing with the CAF II provider to bid for those unserved households, because other non-CAF II providers may offer different technologies that can bring superior speeds to these households.

- a. *Provide an expedited review process to approve supplemental grants to expand CAF-II related projects?*

Race disagrees with allowing CAF II providers to have expedited review to provide supplemental CASF grants to expand CAF II-related projects. Every CASF applicant should go through the same submission and challenge process, unless it is determined to be a priority area

after a proper convening of the Regional Consortia, stakeholders, providers and local governments.

Should the Commission decides, however, that it wishes to provide expedited review for expansion of CAF-II related projects by a CAF II provider, if an independent provider is self-funding a CAF II census block, any adjacent blocks to the CAF II area should qualify for that same expedited review process.

b. Should there be a separate process or set-aside of funding for these supplemental builds?

Race opposes a separate process or set-aside funding for these supplemental CAF II builds. However, should the Commission proceed to implement this proposal, the reverse should also be true in order to promote technology neutral approaches. If an independent Internet service provider is self-funding a build of a designated CAF II census block, the independent provider should have access to those set-aside funds or special processes for adjacent areas to CAF II census blocks.

c. Should there be a separate process or set-aside of funding for these supplemental builds?

No. Similar to its response to questions 3.a. and 3.b., Race posits that if this adopted, the reverse also should be true to be technology neutral. If an independent provider is self-funding a CAF II census block, the independent Internet service provider should have access to those same set-aside finds or special processes for supplemental builds or adjacent CAF II areas.

d. Should supplemental grants be tied to the release of CAF II plans? Should areas where CAF II providers do not commit to build out be reclassified as eligible?

Race does not agree with the supplemental CAF II grants per our response in questions 3.a. and 3.b. Yes, any areas where CAF II providers do not commit to build out should immediately be reclassified as eligible for CASF and opened up to application by any broadband provider. It is in the interest of the state for each resident to obtain access to broadband service at the earliest date possible, and if a CAF II provider is going to decline to provide service in a particular CAF

II area, it should be ordered to inform the Commission immediately so that the area can be marked eligible for CASF funding.

- e. *How should the interests of the CAF II providers to choose which CAF II areas they build out to with federal funding while also requiring them to complete other projects in the state) be balanced with competitor interest in bidding to build out in those same communities?*

No comment, except to say that the original intent of the CASF program was to be technology neutral. In Race's opinion, AB1665 is not technology neutral because it reserved all CAF II areas for build by CAF II-eligible incumbents until 2020, without requiring them to build out all such areas. Race requests that the Commission correct this imbalance by requiring CAF II providers to promptly declare what locations they intend to build in CAF II areas, and then the Commission should designate the areas they don't intend to build as CASF-eligible for any provider.

IV. Cost Reimbursement Process

Question 4. Should the CASF reimbursement process change? AT&T has proposed that grantees receive funding on a monthly basis, instead of being reimbursed after submitting invoices.

- a. *Is it possible to use a new process and still be in compliance with the State Administrative Manual?*
- b. *Are there other state programs the Commission could use as an example? Additionally, given current Staff resources, would payments every two months be acceptable?*

Race supports changing that the current system, which pays in arrears by achievement of quarterly milestones. While Race has been able to work within the current system on its ten grants, it is very difficult in the project start-up phase. Race supports CETF's suggestion that, similar to the Phase I Broadband Adoption Grants, there should be some allowed upfront funding, for example 25%, to allow infrastructure grantees to get started, but otherwise funding in arrears by milestones supported by full documentation (e. g. receipts, invoices, and purchase orders) is acceptable.

Race opposes AT&T's suggestion of monthly funding, because it is not linked to project milestones/progress and thus may result in waste, fraud and abuse. Similar to the CASF Phase II

Broadband adoption grants, Race is amenable to the CETF suggestion that up to 25% be granted up front for start-up costs, but then the rest should be paid out by the usual milestone system.

V. Verification of Middle Mile Infrastructure

Question 5. How should the Commission verify that a middle-mile build included in a proposed project is “indispensable” to that project, as required by statute? Should Commission Staff rely on the middle-mile location information providers submitted as ordered in D.16-12-025? If middle-mile infrastructure already exists near the proposed project area, under what circumstances may an applicant build its own middle-mile infrastructure? If middle-mile infrastructure already exists near the proposed project area, should there be a limit on how much infrastructure may be built? (e.g., 10 miles, 5 miles, etc.) For purposes of grant funding, is leasing or purchasing middle-mile facilities for terms beyond five years (e.g., IRU for 20 years) allowable or even preferred over building new infrastructure? Alternatively, is a challenge to the project application sufficient to prove it is not indispensable, or a lack of a challenge sufficient to prove that it is?

At the July 25th Workshop, Race made the point that as a practical matter, before an applicant brings a CASF application to the Commission, it has engineered its project and identified an interconnection partner for backhaul of its traffic. If there is no available interconnection, then the applicant proposes new “indispensable” middle mile that needs to be constructed in order to effectuate the project. Based on its experience, Race offers the following reflections.

First of all, much of the areas left unserved by broadband are because of the lack of middle mile to bring broadband these rural or remote areas. CETF has cited examples which include the far North counties, the Central Coast, the Central Valley, the much of the Sierras, Inland Empire and San Bernardino. If there was middle mile, it is more than likely some entrepreneurial ISP would have put up the last mile infrastructure to provide needed Internet service in the last decade. So for unserved areas particularly, it should not be surprising to see the need for new middle mile infrastructure.

Second, the question seems to express some skepticism as to whether a CASF applicant really needs to build middle mile for its project. Race assures the Commission that a project can be completed a heck of a lot faster and at a much lower cost if you can find existing interconnection. Thus applicants have strong incentives to find existing middle mile, and Race would be surprised if it was otherwise.

Third, the question seems to suggest that the Staff may recommend that the Commission not fund middle mile, or limit funding for middle mile, as part of a CASF application if some

middle mile exists in the project area. Race is alarmed at this proposal and urges it be rejected. Just because middle-mile facilities may exist near a proposed CASF project does *not* mean that the CASF applicant has actual access to it. Race can think of two of our projects where we engaged with multiple middle mile providers (two independent providers and one incumbent cable provider) to obtain middle mile, and in the end, all three entities declined to create interconnect points within reach of our two projects, stating they are popular long haul routes, they had low fiber availability, and if they actually provided a bid, they quoted us exorbitant rates. It has been our experience that incumbent cable companies generally decline to make available to any competitors any of their dark fiber as a matter of company policy. Also, to be frank, incumbent providers may state in a regulatory hearing room that they are willing to lease out their dark fiber and middle-mile facilities, but in reality, Race's experience is that this decision is very location-specific. In most cases, these providers do not have excess capacity and generally decline to lease out any middle mile or dark fiber to independent ISPs. Finally, it is a fact that CASF applications take a long time to process (1-2 years); by the time one gets a Commission resolution with an approval, often the middle mile you negotiated for when the application was prepared is no longer available and then you have to scramble to find new options, if any. In this scenario, interconnection can end up costing more than what you had put in your initial budget. In summary, for these pragmatic reasons, Race does not think there should be any arbitrary limits put on middle mile facilities. Applicants will not include middle mile unless it is really necessary. Thus Race posits that this is a very localized issue where general rules are not desirable or suitable.

Finally, CASF grants should be allowed to include leasing or purchasing middle-mile facilities for terms beyond five years (including IRUs), which is the functional equivalent of leasing middle mile. Race has leased dark fiber and executed IRUs from providers like Level 3 (now acquired by CenturyLink), Digital 395 and Zayo.

VI. Issues Related to Line Extension

Question 6.a. What are the components of a wireline technology line extension connection that should be remunerated by the program? About how much on average do line extensions cost per foot?

Race recommends that the following components of a wireline technology line extension be included for remuneration by the CASF line extension program: Cable, installation costs,

handholes, pedestals, customer premises equipment (CPE) and conduit. There is no real average line extension per foot due to the fact the cost greatly varies by local condition.

Question 6.b. Is the \$1,000 limit per aerial line extension and the \$3,000 limit per underground drop proposed by Race Telecommunications Inc., sufficient to address properties far away from distribution facilities? (See Comments of Race Telecommunications on Phase II Issues, filed April 16, 2018, at 10.) Alternatively, should the Commission allow remuneration for line extensions costs incurred to serve properties several thousand feet away from distribution facilities? What should be the limit? Should there simply be a maximum length of line extension, for example the 750 feet maximum proposed by North Bay North Coast Broadband Consortium? (See Comments of the North Bay North Coast Broadband Consortium on Commissioner's Amended Scoping Memo and Ruling Phase II, filed April 16, 2018, at 16-19.)

Using its aerial fiber approach for reaching the house on a homeowner's property, Race considers the connection between the closest enclosure or pole and the structure to be served on the homeowner's property (usually the house) with drop cable as "a line extension." Race considers the connection between the closest enclosure or pole and the homeowner's house with drop cable as "a line extension." Race believes that as long as a service provider is able to get to the homeowner's house using drop cable, regardless of distance, then it should be considered "a line extension."

Race stands by its original suggestion to set a limit per extension and suggests a \$1,000 limit per aerial extension and a \$3,000 limit per underground drop. Race believes this will cover most situations except for houses that are located especially far away from the distribution facilities. Race would look to the homeowner to pay the balance of the extension cost.

Race has also considered the suggestion of a maximum length of line extension that would be reimbursed by the CASF Line Extension fund. Race feels that The North Bay North Coast Consortium's suggestion of 750 feet maximum is an acceptable approach, but Race would suggest setting the maximum at 1,000 feet.

Question 6.c. What are the components of a fixed-wireless line extension connection that should be remunerated by the program? And how much on average do fixed wireless extensions cost? Is the \$300 limit per wireless extension connection proposed by Race Telecommunications Inc., sufficient?

The intent for the \$300 wireless extension proposed by Race is to pay for the access point, customer premises equipment, and installation at a subscriber's house to connect to an existing Point of Presence (POP), relay site, or distribution facility location. It is not meant to be used to

create infrastructure for construction of relay sites, distribution facilities or POPs. The normal CASF Infrastructure Fund process should be used for those facilities.

Question 6.d. Should a service provider be able to apply for line extension connection cost remuneration on behalf of the property owner requesting such line extension service connection?

Race recommends that a service provider should be able to apply for line extension connection cost remuneration on behalf of the property owner requesting the line extension service connection. For audit purposes, the service provider should retain in its files information about the specific details of the cost of the build, the property owner's name and service address, and a signed consent form that the property owner has agreed to the line extension and that the provider may apply for the remuneration on its behalf.

In addition, Race agrees with CETF that the cost for the line extension should be shared fairly. Race suggests a 25% payment by the applicant homeowner unless the homeowner demonstrates proof of hardship by being enrolled in a Lifeline Low-Income eligibility program. By requiring a 25% match, Race feels that it will help deter fraud as the homeowner will have to invest personal funds increasing his or her commitment. Otherwise, Race feels that there may be an abuse of the program.

WHEREFORE, Race requests that the Commission consider its comments on these issues and act accordingly in its implementation of updated CASF rules and regulations impacting the Infrastructure and Line Extension programs.

Respectfully submitted,

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