

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

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

**REPLY COMMENTS OF RACE TELECOMMUNICATIONS INC. (U-7060-C)
ON PHASE II ISSUES**

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(hereinafter Frontier) proposes to implement the full funding (100%) provisions immediately. It further proposes Staff prioritize projects in consortia regions below the 98% goal, which are unserved or only have dial up service, and projects that use existing infrastructure or leverage federal investment. Alternatively, Frontier suggests there be an initial window for projects seeking full funding and limiting it to projects in consortia regions currently below 98% deployment, where total project costs are below \$5 million and/or the cost per household is below \$3,000. Race disagrees with the Frontier approach. Full funding and the requirement to use existing infrastructure or Federal Communications Commission (FCC) Connect America Fund Phase II (CAF II) grants will clearly advantage the existing facilities-based providers with CAF II grants (e.g. AT&T and Frontier) until 2020, and disadvantage independent Internet Service Providers (ISPs) such as Race, the largest and most experienced CASF grantee. Race suggests that 100% funding should be reserved used for projects that scale close to the 98% goal in the project area, and that serve areas containing 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 farmworkers, etc.) as identified in the annual broadband survey by the California Emerging Technology Fund (CETF). Putting a limit on the total costs and a cap on the per household goal as suggested by Frontier is inconsistent with achieving the 98% goal.

Frontier supports the proposal that low-income status could justify full funding but not make low-income the exclusive justification for full funding. *Frontier Comments*, at 4. Race agrees that making low-income status the only justification for full funding is not supported by the clear statutory language of AB1665, nor the goal of the CASF program which is to achieve 98% broadband deployment in the state, regardless of the income of the region. All residents deserve broadband, which is a basic utility-type service in the 21st Century like electricity, water, and telephone services.

Central Coast Broadband Consortium (CCBC) suggests that the new base funding for CASF grants be 80% of project costs. *CCBC Comments*, at pp.6-7. Race supports this change. The costs of serving unserved areas is much higher due to the fact these areas generally are very rural or remote far from middle mile service, and thus the costs to bring broadband service to unserved areas is high. Still requiring the ISP to have some “skin in the game” with a 20%

match will help prevent companies with little network experience in rural and remote areas from applying. The CPUC should grant 100% grants only in exceptional cases.

1.3. Definitions. Race supports the proposal of AT&T to modify the Appendix C definition of “households” with other definitions within the Public Utilities Code to be broader and include “a house, an apartment, a mobile home, a group of rooms, or a single room that is intended for occupancy as separate living quarters.” *AT&T Comments*, at p.8. Race agrees with AT&T that the current definition of “households” is outdated for modern California living arrangements and that this proposed change will be beneficial for houses where many families live together, or for houses split up for more than one single occupancy dweller or apartments and the like. The current household definition is rigid and particularly disadvantages immigrant and low-income communities.

1.4. Eligible Applicants. Race strongly opposes the AT&T proposal to have the Commission first prepare a single list of CASF eligible census blocks, based on publicly available Form 477 data, any CASF Right of First Refusal (ROFR), census blocks awarded through the upcoming CAF II auction, and locations that providers identified as having deployed 10/1 Internet access pursuant to CAF, in order to determine what are unserved areas. Race also opposes the Staff and AT&T proposal to have annual CASF applications. *AT&T Comments* at 2-4. Race opposes this proposal because the FCC Form 477 data is overstated as to actual service provided and should not be relied on. Consumers and third parties must have a way to challenge this data with CalSPEED tests and other real world evidence. Further FCC CAF rules do not require service to every household in the census block group, so this does not serve the goal of 98% deployment. Finally, the 10 Mbps download and 1 Mbps upload speeds established in AB1665 are well below the FCC benchmark speed of 25 Mbps download and 3 Mbps upload. This Commission should be encouraging all applicants to provide at least 25/3 speeds consistent with the FCC’s benchmark.

Application Process. Race opposes the CASF Staff and AT&T proposals for annual CASF applications because this will delay service to the public. *AT&T Comments*, at 3. Race agrees that the applications must be processed faster than the current over-a-year timeframes and supports CETF’s suggestions that pending and new infrastructure applications be simplified and continue to be processed before the new Phase II application rules go into effect.

CETF Comments at 4-5. Race also supports applications being processed much faster, but all applicants should proffer the same information and reports.

1.6. Information Required of Applicants. Frontier proposes overbroad confidential protection of its project viability information. *Frontier Comments*, at 10. Race does not understand why this data would be confidential, and believes it should be subject to the normal Commission confidentiality rules. Further, like other parties, Race remains skeptical about the proposed Staff requirement to provide other information on third party's infrastructure in the project area. It is Race's experience that this type of data is usually not made public and is considered confidential. If the data is public and easily accessible, then an applicant should attempt to leverage existing infrastructure to lower project costs if it is available from the owner.

Race is pleased to see The Utility Reform Network and the Greenlining Institute (hereinafter Joint Consumers) support the staff proposal of more relaxed performance bonds. *Consumer Groups Comments*, at 13. Where an applicant holds a Certificate of Public Convenience and Necessity, or has had over three years of operational experience with a financial track record, they should be relieved of the performance bond requirement. Otherwise the Performance Bond Requirement can be a substantial barrier to independent ISPs.

AT&T proposes that applicants that submit proposals with a per-household cost below the threshold listed by Staff in Section 1.7 of Appendix C be removed from certain application and reporting requirements. It argues that removing such administrative burdens, such as requests for financial data, will allow the \$300 million to go farther and benefit more consumers. *AT&T Comments* at 4. Race strongly opposes this suggestion. All grantees should have identical reporting and application requirements, including financial information, location of the households for the project, and completion reporting with detail on the actual households upgraded, in order to ensure the integrity of the program and to ensure no waste, fraud or abuse.

1.7. Low-Income Communities – Expedited Ministerial Review. Race supports comments of those who seek to expand the third criteria for expedited ministerial review beyond low-income communities, to disadvantaged or unserved communities. *Frontier Comments*, at 5; *Consortia Group Comments*, at 8; *CETF Comments*, at 5. This better accommodates the goal of CASF which is to deploy broadband infrastructure to all households, and not just low-income neighborhoods, leaving out other unserved or underserved communities that are not low-income. Race believes a better definition of "low-income" areas is to use the California Median

Household income of \$63,784 as opposed to the median income of less than \$49,200 as proposed by Staff. Further, there are often higher income areas mixed in with low- income areas and a showing of 51% of census blocks being low-income should suffice.

1.9. Right of First Refusal. Race agrees with CETF's request that the Commission identify with certainty and reliability unserved areas available for CASF grants, and its concerns that a Right of First Refusal (ROFR) not be used by existing incumbent facilities-based providers to thwart opportunity, innovation and competition for the people of California. *CETF Comments*, at 4. Race agrees with Gold Country Broadband Consortium (GCBC) that ROFR providers that fail to complete projects in a timely manner be subject to fines or penalties. *GCBC Comments*, at 2-3. Like Race, GCBC recommends that a single extension of a ROFR be given. *GCBC Comments*, at 2-3. Race recommends a single extension only be granted if there's evidence of real significant progress being made, and it should be supported by an officer declaration under penalty of perjury to prevent fraud.

1.10. Treatment of CAF II Areas. Race and CETF agree on requiring verified construction reports to be filed with the Commission every six months by existing facilities-based providers using CAF II funds which outline with specificity the households they are upgrading so that areas not upgraded may be marked eligible on the CA Broadband Map. *CETF Comments*, at 3; *Race Comments*, at 7. CGBC suggest that the existing providers also share this information with the appropriate Regional Consortia; Race is in accord with this suggestion given the important role that the Regional Consortia play in encouraging deployment in each region and helping educate local government and others in the importance of broadband. *CGBC Comments* at 3.

1.11. Submission and Selection Timelines. Three commenters oppose an annual CASF submission as over rigid, delaying service to the public, and overly relying on an ROFR process which has been lightly used so far. *Consortia Group Comments*, at 10, *CETF Comments*, at 5; and *Race Comments*, at 8. The Commission should retain its rolling basis for applications and commit to grant than no later than 6 months from submission. Race suggests that largest scale applications reaching low-income and disadvantaged communities be processed first.

1.13. Project Challenges. Race opposes the proposal of the Joint Consumers of a longer 45-day challenge period, a significant extension from the current 14-day rule and the Staff proposal of a 21-day window. *Joint Consumers Comments*, at 14. Race believes that a 21-day

period is adequate and that a 45-day period will cause too much additional delay. If applications will be granted in 180 days, a 45-day challenge period is excessive.

1.18. CEQA Payment. Race supports the comments that seek to streamline CEQA review and reduce delay, while ensuring appropriate environmental review takes place. *CETF Comments*, at 4, *Frontier Comments* at 8.

WHEREFORE, Race respectfully requests the Commission amend its CASF proposals contained in Appendix C to be in accord with its Comments and Reply Comments.

Respectfully submitted,

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