BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Consider Modifications to the California Advanced Services Fund.	R. 12-10-012 (Filed October 25, 2012)

REPLY COMMENTS OF THE UTILITY REFORM NETWORK AND THE GREENLINING INSTITUTE ON PHASE II OF THE FEBRUARY 14, 2018 AMENDED SCOPING MEMO AND ASSIGNED COMMISSIONER'S RULING

Vinhcent Le, Legal Counsel
The Greenlining Institute
360 14th St., 2nd Floor
Oakland, CA 94612
(510) 809-1813
vinhcentl@greenlining.org

Ashley L. Salas, Staff Attorney
Christine A. Mailloux, Managing Attorney
The Utility Reform Network
1620 5th Ave., Ste. 810
San Diego, CA 92101
(619) 398-3680
cmailloux@turn.org
asalas@turn.org

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I. INTRODUCTION

Pursuant to the February 14, 2018, Amended Scoping Memo and Assigned Commissioners' Ruling, The Utility Reform Network and the Greenlining Institute ("Joint Consumers") respectfully submit these reply comments on Phase II of the Staff Proposal.

II. DISCUSSION

A. The CASF Scoring Mechanism Should Reward Projects that Deliver Affordable and High Speed Broadband

Opening comments suggest a variety of changes to the CASF application process, including removing pricing and speed categories from the application scoring criteria.[1] In considering these comments, the Commission should not lose sight that the CASF program was developed to address the Legislature's intent that "California be a national leader and globally competitive in the deployment and adoption of broadband technology and in implementing quality universal access for all residents."[2] While the Legislature put in a minimum speed goal, achieving the intended globally competitive broadband system will require speeds beyond these minimums. In order to deliver on a world class broadband infrastructure, it is necessary and appropriate to evaluate projects in a way that supports fast, futureproof, and high quality deployments. Expensive, slow, broadband services that require data caps to, theoretically, accommodate high levels of usage are not sufficient to be globally or nationally competitive and are less likely to promote broadband adoption. Moreover, failing to properly address the need to provide services to disadvantaged communities, especially communities of color, perpetuates the

[1] AT&T Opening Comments at pp. 22-23.
[2] AB1665, Chapter 851 (approved by the Governor and filed with the Secretary of State on Oct. 15, 2017), Section 2.

lack of broadband access and adoption and the inequalities that disproportionately leaves these communities behind the digital divide.

At a minimum, a globally competitive broadband program should deliver high-speed, affordable broadband. As the Legislature acknowledges, this is not currently the case in many areas of California. Research suggests that by 2025, an average user will require download speeds of 150-500Mbps and upload speeds of 100Mbps, while high-end users (including those running small or home offices) will require 1Gbps speeds or more.[3] Only seven years away and California remains far from even approaching those speeds with its 20.1 Mbps average broadband speed, falling below the average broadband speeds of the top 10 states nationally.[4] California doesn't compare favorably regarding affordability either, Californians pay an average of $103 per month for high-speed broadband bundles, compared to an average of $55 in the EU – nearly 50 percent more.[5] At standalone prices, Californians pay an average of $73 a month for 30-100Mbps broadband plans compared to $43 in the EU.[6] By these metrics, California has a long way to go to become a global, or even national, broadband competitive leader. CASF can help close that gap with program rules that promote affordability and competitive broadband speeds.

1. The CASF Application and Scoring Mechanism Should Promote High Speed Broadband Deployments

Joint Consumers generally support maintaining the speed category for scoring applications and giving higher scores for applicants that propose providing broadband speeds at

[3] European Commission, "SWD (2016) 300, Connectivity for a Competitive Digital Single Market – Towards a European Gigabit Society," (2016).
[4] Akamai, "State of the Internet Q1 2017," (2017).
[5] European Commission (EC), "Broadband Internet Access Cost (BIAC) Autumn 2015 - Prices as of September-October 2015" (2016).
[6] *Id*.

or above the FCC's 25/3 Mbps benchmark for "unserved" communities.[7] Specifically, Joint Consumers oppose AT&T's and GeoLinks's recommendations to eliminate the speed category. Joint Consumers support Consortia proposals and urge the Commission to design the CASF program in a way that promotes 25 Mbps speeds and provides more points for projects that can be affordably upgraded to meet future needs.

Speeds and upgradability should be included as scored criteria in the application process. AT&T's recommendation to eliminate the speed category in the grant application scoring process is shortsighted and inefficient in its narrow focus on delivering the minimally required speeds.[8] In contrast, Joint Consumers generally support the Consortia's recommendations to promote projects that provide higher broadband speeds, or at least the capability for upgrading capacity, wherever possible.[9] As stated above, a 10/1 Mbps speed is inadequate for growth and meeting needs of the near future. The Commission should prioritize applications that prepare California for the future and that reduce the need for additional rounds of CASF upgrades in areas where 10/1 Mbps speeds have become obsolete or fail to remain competitive. Specifically, the Commission should include in the evaluation whether an applicant's project provides 25 Mbps speeds and/or whether the provider has the capability to affordably upgrade their network to 25 Mbps and beyond in the future.[10]

With regards to evaluating speeds and upgradability, GeoLinks cautions that "the Commission must ensure an apples-to-apples comparison when evaluating CASF applications

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[7] Race Telecommunications Opening Comment at pp. 4-5, NBNCBC Opening Comments at p. 5, CCBC Opening Comments at pp. 7-8, CCRP, RCRC, UCCC, and NECCC ("The Commenters" or "CCRP et al.") Opening Comments at mimeo p. 7.
[8] AT&T at p. 22.
[9] CAInt Opening Comments at p. 9, The Commenters Opening Comments at mimeo p. 7, NBNCBC Opening Comments at p. 5, CCBC Opening Comments at p. 7.
[10] The Commenters Opening Comments at mimeo p. 7, NBNCBC Opening Comments at p. 5.

(the total price/ offering regardless of technology) and not an apples-to-fiber comparison that gives more expensive business models a leg up for no reason other than these projects have traditionally been more expensive in the past." While GeoLinks properly raises concerns about cost-efficiency of deployments, its recommendations go too far towards weakening the overall requirement for viable and meaningful projects. Indeed, AB 1665 supports investment in cutting edge technology and recognizes that CASF is an investment into California's future:

> "Broadband infrastructure is also vital to the operation and management of other critical infrastructure, such as energy generation systems and the electrical grid, water supply systems, and public safety and emergency response networks. There is a need for world-class broadband infrastructure throughout California to support these major infrastructure investments, and thereby to protect lives, property, and the environment."[11]

Fiber infrastructure underpins many of the technologies recognized as critical in the bill because of the capacity it can support (easily enabling multiple applications), better protection from electrical interference, and its ability to support non-field powered communications.[12] Therefore, it is appropriate that technologies, like fiber, that can deliver a higher caliber of reliable advanced services could be scored higher than fixed wireless projects or projects that use existing (non-fiber) infrastructure under CASF. However, the Commission must make sure it is getting value for its investment dollars. Any preference for faster speeds and more capacity should be tempered by managing the Fund to meet the Legislature's goal of providing access to 98% of each consortia region.

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[11] AB1665, Chapter 851 (approved by the Governor and filed with the Secretary of State on Oct. 15, 2017), Section 2.

[12] Jason Cohen, "Fiber to the Home: A Key Element for Smart Electric Grids," FTTH Council (2011), available at https://www.fiberbroadband.org/d/do/46 (last visited May 1, 2018).

Communities receive benefits from the CASF program because carriers have not yet deployed sufficient minimum broadband speeds in these areas and carriers may only be willing to invest further with additional outside funding. The Commission should balance the need to provide these communities with faster services that can be upgraded with the need to spread CASF funds throughout communities of need in California.[13] However, as the fund is finite, to the extent that CASF funds can cost-efficiently support speeds that meet or exceed the FCC unserved minimum of 25/3, applicants who provide speeds at or above the FCC minimum should be scored higher.

2. The Application and Scoring Mechanism Should Promote Affordable Broadband Services

The Commission should ensure that pricing of end user services remains a strong element of the evaluation process for all CASF grants and especially grants given from the $100 million low-income set-aside.[14] In its opening comments, AT&T asks the Commission to eliminate the scoring category for pricing commitments and seemingly ignores that pricing is a major barrier to adoption.[15] In contrast, CCRP et al. and NBNCBC's comments focus on creating pricing commitment for CASF funded projects that would be "objectively reasonable" or set at the lowest price offered by that provider in California.[16] Similarly, ORA and Race Telecommunications acknowledge pricing as a barrier for adoption and advocate for a $14.99 per month price for broadband service where a provider receives 100% CASF funding and $25 per month price for 25 Mbps speeds respectively.[17] As described further below, Joint Consumers

[13] See also NBNCBC Opening Comments at p. 5.
[14] Appendix C at p. 5
[15] AT&T Opening Comments at p. 23.
[16] The Commenters Opening Comments at mimeo p. 6, NBNCBC Opening Comments at p. 6.
[17] ORA Opening Comments at pp. 3-4.

support maintaining pricing commitments in the CASF application and giving higher scores to applicants who commit to providing affordable broadband prices.

Ensuring that CASF funded projects are affordable will drive up adoption and achieve California's goal of universal access. Both national and state studies show that affordability is the number one reason for lack of access to home broadband.[18] As noted above, Californians pay some of the highest costs for broadband in the developed world. Studies show that even a 10 percent reduction in the price of broadband will increase broadband subscriptions by four to seven percent.[19] CASF should leverage its highly subsidized broadband deployments to also address this cost barrier to adoption.

Joint Consumers recommend clarifying that projects with pricing commitments beyond the minimum required two years would receive more points, and recommend setting a benchmark price based either on the lowest price in a region, as NBNCBC has suggested, or otherwise requiring providers to obtain a waiver explaining to the Commission why operating costs or other factors justify a higher price.[20] As demonstrated by Race Telecommunication's recommended pricing, CASF funded deployments can deliver 25 Mbps speed at affordable rates and the Commission should prioritize funding to other CASF projects that deliver similarly low prices relative to the speeds provided. Further, where a CASF project is fully paid by the fund, Joint Consumers recommend a stricter pricing commitment along the lines suggested by ORA.[21]

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[18] *See* John Horrigan, "Barriers to broadband adoption: Cost is now a substantial challenge for many non-users," Pew Research (2015), *available at* http://www.pewinternet.org/2015/12/21/3-barriers-to-broadband-adoption-cost-is-now-a-substantial-challenge-for-many-non-users/ (last visited May 1, 2018).

[19] Carare, McGovern, *et al.*, "The willingness to pay for broadband of non-adopters in the U.S.: Estimates from a multi-state survey," Information Economics and Policy 30 (2015); European Commission BIAC 2015.

[20] NBNCBC Opening Comments at p. 6.

[21] ORA Opening Comments at pp. 3-4.

These networks will be mostly or completely financed by the end user surcharges, and the Commission should condition these deployments with criteria that facilitate lower prices for end users which will go a long way towards closing the digital divide.

Similarly, the Commission should reject AT&T recommendation to eliminate the installation fees waiver, arguing that the waiver would "create an unnecessary change to providers' business processes and current pricing structures."[22] However, AT&T already has a system in place for waiving these fees.[23] Yet, AT&T's commitment is voluntary and could change at any time and any burden created by altering its existing processes is likely to be minimal compared to the $99 charge that vulnerable and low-income CASF customers might have to pay. As discussed above, cost is the greatest barrier to broadband adoption and cost includes large up-front installation fees. Since CASF deployments would be heavily or completely subsidized by surcharge revenues, waiving installation fees is appropriate to achieve the Legislature's goal of increasing broadband adoption.

B. The Commission Should Balance Oversight and Reporting Obligations that Encourage High-Quality CASF Applications

1. The Commission Should Continue to Collect Cost Data

AT&T proposes changes to the CASF reporting and application process to encourage greater provider participation. AT&T suggests that carriers will be more likely to provide services at lower per-household costs if the Commission removes cost reporting for projects that fall below Staff's technology-specific cost benchmarks. Specifically, AT&T recommends exempting those projects from submitting detailed financial data on the applicant's company and

[22] AT&T Opening Comments at p. 16.
[23] *See* AT&T Bundle Package Terms & Conditions available at https://www.att.com/bundles/u-verse.html (noting bundle packages include "standard pro installation" without additional charges for installation) (last visited May 1, 2018).

from reporting proposed costs of deployment and the actual costs of construction.[24] While Joint Consumers generally support efforts to make the program more attractive to providers, these efforts should not come at the expense of adequate oversight.

The Commission should reject AT&T's proposal. Incentive to lower per-household costs already exists in the current scoring mechanism, awarding higher scores based on lower "funds per customer."[25] Also, these cost benchmarks are not universally applicable. As noted in Joint Consumers' opening comments, the cost benchmarks are not geographically specific and may not represent the actual costs necessary to deploy broadband to an area. Actual cost data is necessary to ensure that costs are reasonable and to allow the Commission to establish *current* cost benchmarks, which is necessary to ensure that the CASF program is not overpaying providers as deployment costs drop below current averages.

2. The Commission Should Continue to Use CalSPEED

The CalSPEED tool is a valuable application to measure actual broadband speeds and the Commission should continue to use it to verify CASF eligibility, challenges, and project completion. The Commission should reject AT&T's preference for alternatives like Ookla or self-reported data.[26] In contrast, other commenters recognize the value of the CalSPEED test and request that CalSPEED tests are done at peak hours or averaged across all times of the day to get a more accurate measure of actual broadband speeds.[27] Joint Consumers agree that the CASF can and should continue to rely on CalSPEED and that tests should be done at peak hours.

[24] *See* AT&T Opening Comments at pp. 15,17, 29.
[25] Appendix C at p. 18.
[26] AT&T Opening Comments at pp. 13, 31.
[27] CCTA Opening Comments at p. 6; The Commenters Opening Comments at mimeo p. 5.

Joint Consumers caution that not all speed tests are made the same. For example, Ookla is inferior to CalSPEED because Ookla uses very local servers to obtain speed results, thereby indicating the speeds available at perfect conditions and not the speeds consumers actually receive. Ookla also discards the bottom third of download speed results, biasing the results towards higher speeds.[28] In contrast, CalSPEED provides a more "real-world" test that does not rely on local servers:

> Many measurement tools focus on evaluating just the local radio access network - the last few miles - and not the backhaul network to the ultimate server resource used. CalSPEED instead tests the complete network path, from the client device, through the local access network, through the Internet backbone, to several server destinations. CalSPEED emulates this user experience with two fixed servers - one physically located in Northern California and the other in Northern Virginia - both in the Amazon Web Service (AWS) cloud. CalSPEED reports performance both to each individual server and the average between them. . . . Internet performance delivered to the user or the Internet user experience - will vary based on where on the Internet the desired server is located. And desired servers are scattered across the Internet, not just close to every user.[29]

AT&T's comments take issue with CalSPEED's real-world methodology arguing that it should be allowed to use advertised speeds or Ookla, noting "Advertised speeds are likely to be more representative than actual speeds, which can vary by the specific location of the customer being test [*sic*] (*e.g.*, near or far from a cell tower)."[30] However, the fact that wireless broadband speeds may vary according to location is, at least partially, the point of these speed tests. These tests should confirm that a provider has deployed CASF-funded services that meet CASF program speed minimums throughout the intended service area. Actual speeds a consumer experiences are

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[28] Ken Biba, "CalSPEED: Measuring California Mobile Broadband - A Comparison of Methodologies," Novarum (2014) at p.1, *available at* ftp://ftp2.cpuc.ca.gov/telco/BB%20Mapping/Field%20Testing/Biba%20Mobile%20BB%20Comparison%209%204%2014%20Filed%20(2).pdf (last visited May 1, 2018).
[29] Id. at 3
[30] AT&T Opening Comments at p. 20.

more representative than advertised speeds for the capacity of the deployed network, and providers should be responsible for ensuring that the customers in their project area receives the speeds the CASF fund is subsidizing.

Contrary to AT&T's argument, a carrier's deployment and placement of backhaul and peering locations will directly affect the speeds consumers experience. Therefore, AT&T and other carriers do have some control over actual speeds and should be held accountable for the actual speeds reported in CalSPEED results. CalSPEED tests are also not limited to locations where an active customer has subscribed for service because it can measure the speed available regardless of whether an active customer exists.[31] Furthermore, these tests should be conducted during peak hours as that will provide the clearest picture of actual broadband speeds and reduce incentives for a provider to "oversubscribe" networks,[32] a practice which leads to higher profits but unsatisfactory customer experiences.

The Commission needs to ensure that providers meet minimum speed requirements and therefore should use tools that measure broadband speeds based on real-world conditions and reflect the speeds customers actually receive. Therefore, the Commission should continue to use the CalSPEED tool and it should require testing during peak hours.

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[31] AT&T Opening Comments at p. 13.

[32] "Oversubscription to the Internet: Because Internet service providers (ISPs) recognize that users in a given area do not all access the Internet at the same time, ISPs subscribe to only a portion of their networks' total potential demand. For example, an ISP that has 1,000 subscribers with 10 Mbps service might contract for a 100 Mbps connection rather than the maximum 10,000 Mbps Internet connection its users might require. The ratio of a network's maximum potential demand to its contracted rates is its oversubscription ratio. In this example, the oversubscription ratio is 100:1. At times, users on networks with high oversubscription rates do not notice the oversubscription; at other times, oversubscription brings their connections to a crawl – just like traffic on the weekend versus traffic during a weekday rush hour." Tom Asp, "Understanding Broadband Performance Factors." CTC Technology and Energy at p. 89 (2014), *available at* http://www.ctcnet.us/wp-content/uploads/2014/04/BBC_Mar14_UnderstandingBroadband.pdf (last visited May 1, 2018).

C. <u>The CASF Bond Requirements and Grant Payments Should Balance the Need to Reduce Barriers for Broadband Companies to Deploy Services and the Need to Protect Vulnerable Communities and the Fund from Defaulting Broadband Companies</u>

1. The Commission's Ability to Impose Penalties and Withhold Payment is Not a Substitute for the Protections Provided by a Performance Bond

The Commission should reject AT&T's proposal that the performance bond requirement should be eliminated.[33] AT&T argues that because the Commission can impose penalties and can withhold the last 20% of grant funding a performance bond is unnecessary. However, these protections are insufficient and the Commission should require multiple levels of protections for ratepayer funds. The purpose of the performance bond requirement is to "ensure that projects are completed," and in doing so it also protects the CASF program – ratepayer funded surcharge revenue– from waste, fraud and abuse.[34] Performance bonds give the Commission money in hand to reimburse the Fund for any losses incurred if a grant recipient defaults on its project or otherwise commits waste, fraud, or abuse. Also, as ORA notes, performance bonds protect the Fund in multiple ways, including acting as a third-party verification of a company's financial health and credit-worthiness.[35] Although Joint Consumers recognize that "to date, there have been no program defaults," the risk of default and harm to the program still exists.[36] This is a risk that consumers should not have to take. If a company defaults, consumers – through the CASF fund – should not bare any loss especially where it is standard industry practice to require performance bonds. As such, the Commission should continue to use performance bonds as a

[33] AT&T Opening Comments at p. 15.
[34] Amended Scoping Memo, Appendix C at p. 11. See generally, D.14-02-018 (from R.12-10-012, Issued March 4, 2014) at pp. 12-19.
[35] Amended Scoping Memo, Appendix C at p. 11; ORA Opening Comments at pp. 9-10.
[36] Amended Scoping Memo, Appendix C at p. 11. See also CCTA Opening Comments at p. 7.

standard practice to safeguard the public interest and consumers' money with limited exceptions as noted in Joint Consumers' opening comments.[37]

The Commission's ability to impose penalties and hold back payment of CASF grant funding falls short of matching the protections offered by performance bonds. In proposing that performance bonds be removed, AT&T fails to acknowledge ORA's observation that performance bonds serve as third-party check on a company's financial health, and fails to acknowledge that a performance bond insures the full amount of a CASF grant and not just 20%.[38] AT&T also fails to acknowledge that the CASF penalties have damages caps.[39] Furthermore, AT&T's proposal to allow carriers to substitute a letter of credit for a performance bond, consistent with the FCC's requirements for CAF II funding, is not a comparable protection as a letter of credit is not a guarantee of project completion and it is not a guarantee of reimbursement to the Fund if the company defaults.

As discussed further below, CAF II and CASF are not parallel programs and have different rules to address the difference between the programs. Relevant here, CASF funding is available to more categories of recipients than CAF II. For example, non-telephone corporations are eligible to receive CASF funding. In permitting non-telephone corporations to receive CASF funding, the Commission found it was necessary to require performance bonds in addition to enforcing CASF program rules through penalties and withholding payments to ensure "the project is completed in accordance with the approved grant."[40] Although no defaults have

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[37] ORA Opening Comments at p. 9. See generally "Information for Communications Applicants and Registrants in California" retrieved from http://www.cpuc.ca.gov/General.aspx?id=1019 (April 30, 2018). Joint Consumers Opening Comments at pp. 13-14.
[38] AT&T Opening Comments at p. 15.
[39] D.14-02-018, Appendix 2 at p. 12 (citing penalty provisions of Public Utility Code §2111 (limiting penalty amount to between $500 and $50,000)).
[40] D.14-02-018 at pp. 17-18.

occurred to date, the CASF program is more vulnerable to defaults than CAF II because CASF is available to a broader range of potential recipients that may not have a CPCN or WIR. Therefore, the Commission should continue to protect the Fund – ultimately protecting the vulnerable communities who are dependent on CASF for broadband deployment and protecting the consumers that pay surcharges into the fund – from defaults and other potential threats to the program.[41]

2. CASF Should Not Adopt Monthly Payments and Annual Reporting

AT&T's proposal to implement monthly payments with annual reports is inappropriate for CASF. AT&T's proposal fails to adequately address the differences between CASF and CAF II. CASF has a different payment schedule and reporting requirements than CAF II to address California's unique deployment needs and the need to ensure compliance with the CASF program. Indeed, CASF payments should be tied to regular reporting so the Commission can ensure compliance with the program rules and deployment progress is being made.

CASF and CAF II provide support for different lengths of time and have different reporting requirements as a result. CAF II provides funding support for 6 years with an annual report requirement resulting in six reports over the course of funding. In contrast, Staff's proposal requires 4 reports for the duration of the CASF grant, already doubling the current interval for reporting project progress. Since CASF funds projects for a third of the time CAF II funds projects, CASF necessarily requires reports on a more frequent basis.

Utilizing those reports, the Commission has the authority to reduce or withhold grant payments – of any amount – to ensure a grant recipient's compliance with CASF program

[41] In Opening Comments, Joint Consumers recognized possible ways the performance bond requirement can be narrowed and yet still protect the program from possible default and other potential threats. Joint Consumers Opening Comments at pp. 13-14.

rules.[42] However, if the Commission makes grant payments monthly without tying the payments to deployment progress, as AT&T suggests, then the Commission essentially waives or greatly reduces its ability to ensure program compliance. This is unacceptable. The Commission has a statutory obligation to "develop, implement, and administer the California Advances Services Fund program" and the Commission should not relinquish its enforcement authority and reduce its oversight of recipient compliance with the CASF program rules.[43]

D. CASF Program Rules Need to Balance California's Statutory Goal to Deploy Broadband and the Need to Reduce Overbuild in CAF II Funded Areas

Public Utility Code Section 281 reduces the potential for overbuild by preventing CASF projects in areas where another provider is receiving CAF funds to deploy broadband through 2020.[44] However, as the statue, the Amended Scoping Memo, and many commenters acknowledge, CAF recipients can finish, and indeed have finished, their CAF II deployments to an area before 2020. Therefore, the Commission should create rules regarding how a CAF area can be made available for CASF funding as quickly as possible once the potential for overbuilding is eliminated.

As CAF II areas are developed, the Commission should keep apprised of the status of those developments. Joint Consumers agree with ORA that "the Commission should request that CAF II carriers submit a progress report on their CAF II projects along with their ROFR filing" to keep the Commission apprised as to CAF II carriers' progress and what areas – if any – the carriers have completed their CAF II build outs. In so doing, the Commission can increase broadband deployment transparency, can update the California Broadband Availability Map and

[42] D.14-02-018 at pp. 17-18.
[43] Pub. Util. Code §281(a).
[44] Pub. Util. Code §281(f)(5)(C)(i)

can maintain a central repository for areas identified for CASF projects. An up-to-date California Broadband Map illustrating all CASF-eligible census blocks available before applications are due will increase the efficiency of the program. Joint Consumers agree with AT&T that knowing what areas are CASF-eligible will reduce or "eliminate later disputes and should allow the Commission to review and decide on applications more quickly, leading to construction beginning more quickly and end-users receiving 10/1 broadband access more quickly."[45] Therefore, Joint Consumers also support CETF's proposal that the Commission should require any carriers that are deploying facilities using CAF II funds, or based on settlement agreements or MOUs, to submit progress reports to the Commission so there is more transparency as to what areas are eligible for CASF funding and to expedite the deployment of broadband throughout California.[46]

As opposed to the Commission seeking out the CAF II deployment reports from the FCC, as AT&T suggests, Joint Consumers encourage the Commission to request carriers submit their CAF II deployment reports to the Commission upon filing them with the FCC.[47] Having the CAF II carriers provide their FCC reports to the Commission will expedite the Commission's receipt of the reports and the Commission's ability to update the California Broadband Map. This reporting is especially important in high-priority areas where vulnerable communities

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[45] AT&T Opening Comments at p. 9.
[46] CETF at p. 3. *See generally* D17-10-003, Decision Approving Settlement Regarding Proposed Transfer of Control at p. 36 (CenturyLink's recent settlement agreement contains a commitment to build out middle-mile infrastructure to benefit unserved and underserved communities and to report its progress to the Commission. Reporting progress on these commitments may yield opportunities for applicants to work with CenturyLink in developing viable projects).
[47] AT&T Opening Comments at p. 19.

should not have to wait until 2020 for CASF funded projects if a CAF II carrier in that area files a report that indicates the carrier chooses not to deploy broadband.[48]

Joint Consumers agree with CETF, Race Telecommunication, and GeoLinks that CAF II carriers that release an area should have to wait at least 90 days to apply for CASF funding for that same area.[49] CASF is awarded on a first-come, first-serve application basis, and CASF rules should prevent CAF II carriers from having the upper hand because they can anticipate using inside knowledge by submitting CASF applications in coordination with their release of CAF II areas.[50]

E. Joint Consumers Generally Support the Following Proposals

1. Approving a Wider Range of Consortia Activities

Joint Consumers recommend that the Commission follow CCBC's recommendation and take a broader interpretation of what it means to "assist infrastructure applicants" and aid in infrastructure development.[51] Approved Consortia activities should encompass a wider, but still defined, set of responsibilities that include: supporting local government broadband policy,[52] funding aggregation of demand,[53] and supporting adoption efforts.[54] These activities can help support the business case for a CASF project, ensure that the Consortia remain well-rounded and knowledgeable of current developments as the experts regarding broadband deployment needs in their communities, and ensure that customers are connected once the project is complete.

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[48] The Commenter Opening Comments mimeo at p. 9.
[49] CETF Opening Comments at p. 3, Race Communications Opening Comments at p. 7, GeoLinks Opening Comments at p. 7.
[50] CETF Opening Comments at p. 10 (noting Frontier submitted its CASF application in coordination of its release of a CAF II area, thereby excluding competing applicants).
[51] CCBC Opening Comments at mimeo p. 10.
[52] *Id.*
[53] *See* CETF Opening Comments at 6 and CCBC Opening Comments at approximately p. 10.
[54] *See* Joint Consumers Opening Comments at p. 15.

However, the Commission should also ensure that approved activities are not wasteful and duplicative of existing efforts. For example, any Consortia work to inventory public rights of way may be made redundant by the existing Commission efforts in Investigation 17-06-027 which aims to create a shared statewide database of conduit and poles. While Joint Consumers support a broad range of Consortia activity, funded activities should be specifically reported and coordinated with other Commission and local community efforts to avoid inefficiencies and duplication of effort.

2. Defining "Indispensable" Middle-Mile to Protect Against Anti-Competitive Behavior.

Changes to the CASF program eliminate funding for middle-mile infrastructure unless it is "indispensable."[55] Joint Consumers generally support CCRP et al.'s definition of "indispensable" middle mile which states that "that new middle-mile infrastructure is 'indispensable' when existing infrastructure is either unavailable due to the owner's refusal to provide legally binding access commitments, or is unaffordable as determined in accordance with objective standards."[56] Middle-mile owners that also provide last-mile services have less incentive to provide access to middle-mile infrastructure to a potential last mile competitor. Defining "indispensable" middle-mile in a way that protects against unaffordable pricing and anti-competitive actions will allow CASF applicants to have more leverage when negotiating middle-mile access agreements and prevent middle-mile owners from abusing their market power. Moreover, a less restrictive definition of "indispensable" middle-mile may result in less expensive middle-mile access costs and may also support lower broadband prices for end users.

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[55] Appendix C at p. 3.
[56] The Commenters Opening Comments at mimeo p. 6.

3. More Expansive Definition of Low-Income

Joint Consumers strongly support the proposal to set-aside $100 million to benefit low-income communities and recommend that the Commission go further in using CASF to benefit struggling Californians. For example, CETF suggests that expedited ministerial review process should be expanded for all infrastructure applications that primarily serve disadvantaged communities that the CETF Annual Survey show are unconnected or underconnected.[57] These disadvantaged communities include people of color, people with disabilities, seniors and communities with low education levels such as farmworkers.[58] Joint Consumers support this recommendation and further recommend expanding the "Low-Income Areas" section of the scoring criteria[59] to include disadvantaged communities. This would ensure all applicants have the incentive to target population segments that are falling behind in the digital divide. This change would promote adoption and access for communities of color who significantly lag behind white families in home broadband adoption.[60]

In extending this priority treatment, the Commission should consider defining a disadvantaged community as a group with home broadband connection rates 5% below California's statewide average as determined by the CETF's Annual Survey or through an independent adoption study commissioned by the Commission.[61] According to CETF data, this definition would include communities with large populations that did not complete high-school, seniors, disabled individuals, Latinos, Asian-Americans and African-Americans.

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[57] CETF Opening Comments at p. 5.
[58] *Id.*
[59] Appendix C at p. 18.
[60] *See* CETF, "Broadband Internet Connectivity and the "Digital Divide" in California – 2017," CETF (2017) (hereafter CETF 2017 Annual Survey), *available at* http://www.cetfund.org/progress/annualsurvey (last visited May 1, 2018).
[61] *See* CETF 2017 Annual Survey.

Finally, the Commission should provide more guidance on how the low-income set aside will work. It is unclear how a project will qualify for funds from the set-aside. The Commission should define what it means for a project to "serve" or "benefit" a low-income or disadvantaged community and possibly qualify for greater points in the scoring criteria or inclusion into the expedited review process. For example, AT&T proposed defining the eligibility by establishing a "ratio of low-income and/or high-priority census blocks to the entire number of census blocks covered by the application."[62] Joint Consumers generally support the concept of using a ratio comparing the number disadvantaged or low-income census blocks to determine scoring points. Wherever possible, the ratio should look at the number of disadvantaged or low-income households instead of census blocks to get a more accurate comparison and to account for different housing densities between census blocks. Developing rules and scoring criteria that promote broadband projects in communities that lag behind in broadband adoption will allow the CASF program to meaningfully deliver on the promise of universal service.

4. Limit Extensions for Right of First Refusal

Joint Consumers generally agree with ORA that a carrier should not be permitted to extend its right of first refusal beyond what is permitted by Resolution T-17590.[63] By exercising its Right of First Refusal, a carrier has to demonstrate "its intent to upgrade service to households at served speeds within 180 days."[64] In doing so, the carrier prevented other carriers from deploying broadband to those households. Only under limited circumstances should a carrier be granted an extension for its exercise of its Right of First Refusal, and its exercise should be limited to once per geographic area.

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[62] AT&T Opening Comments at p. 23.
[63] ORA Opening Comments at p. 12.
[64] Resolution T-17590 (Issued December 20, 2017) at p. 3.

Competitive broadband companies and broadband consortia have expressed their concerns that, if permitted to renew its Right of First Refusal multiple times, a carrier will continue to block competitive broadband providers from serving the households in that area and ultimately delay the Legislature's goal of deploying broadband to California residents.[65] Joint Consumers share these concerns.

If a carrier is not able to completely deploy upgraded service within 180 days, it must provide a narrative to the Commission explaining the delays that were beyond the carriers' control – permitting issues, CEQA compliance, weather or an act of God – and the progress status of the deployment.[66] To incentivize carriers to timely complete their Right of First Refusal projects, the Commission should not grant a Right of First Refusal project extension unless the project is substantially completed or the delays are considered reasonable using an industry standard and would have had a similar impact on a competitive provider's project. Restricting the circumstances under which a carrier exercising its Right of First Refusal can obtain an extension, and limiting a carriers' ability to exercise future Rights of First Refusals for those same areas, serves the public interest by helping to ensure carriers deploy broadband within the agreed-to timeframes.

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[65] Race Telecommunications Opening Comments at p. 7, CCBC Opening Comments at approximately p. 4, NBNCBC Opening Comments at p. 10, GCBC Opening Comments at p. 3, GeoLinks Opening Comments at p. 6, CETF Opening Comments at pp. 3, 10.
[66] Resolution T-17590 at pp. 4-5.

III. CONCLUSION

For the reasons set forth above, Joint Consumers request that the Staff Proposal be modified in accordance with our recommendation here.

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Respectfully,

/s/ Vinhcent Le
Vinhcent Le

Vinhcent
The Greenlining Institute
360 14th St., 2nd Floor
Oakland, CA 94612
(510) 809-1813
vinhcentl@greenlining.org

/s/ Ashley L. Salas
Ashley L. Salas

Ashley L. Salas
The Utility Reform Network
1620 5th Ave., Ste. 810
San Diego, CA 92101
(619) 398-3680
asalas@turn.org