

**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)

**OPENING COMMENTS OF THE UTILITY REFORM NETWORK AND  
THE GREENLINING INSTITUTE ON THE SEPTEMBER 5, 2018  
ADMINISTRATIVE LAW JUDGE'S RULING  
REQUESTING COMMENTS ON ELIGIBILITY FOR AND PRIORITIZATION OF  
BROADBAND INFRASTRUCTURE FUNDS**

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## **I. INTRODUCTION**

Pursuant to the September 5, 2018, Administrative Law Judge’s Ruling, The Utility Reform Network and the Greenlining Institute (“Joint Consumers”) respectfully submit these opening comments on the eligibility for and prioritization of Broadband Infrastructure Funds from the California Advanced Service Fund (CASF).

## **II. DISCUSSION**

### **A. Eligibility for 100% Funding**

The Commission asks how it should determine whether a project is eligible for 100 percent funding. As a general principle, Joint Consumers, encourage the Commission to place a high bar for the carriers to meet to receive full funding of their projects. Generally, it is poor public policy to hand over public money to finance construction wholly owned by private companies that will, in turn, charge the same taxpayers for access to infrastructure they paid for. As the statute indicates, the project should make a “significant contribution” to the goals of the program to be eligible for a higher-than-minimum level of funding.<sup>1</sup> Joint Consumers believe one way to determine whether a project is making a significant contribution is to ensure customers see tangible benefits such as lower prices, faster services, better service quality, innovative products, and more robust emergency services. Full funding leaves less money for infrastructure projects in other parts of the state and could inhibit progress toward the program goal of ensuring full access to high quality broadband that is necessary to promote economic growth and job creation.

While providers may argue that 100 percent funding is necessary in rural areas because those rural areas are uneconomical, experiences in other countries such as Sweden show that full

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<sup>1</sup> Pub. Util. Code Section 281(f)(13).

funding is not necessary to develop rural broadband. Sweden’s rural population, as a percentage, mirrors California yet Sweden can boast a much higher rural connectivity rate.<sup>2</sup> Sweden provides 50% public funding to rural broadband projects with the balance made up by private operators and municipalities.<sup>3</sup> Moreover, there were significant consumer protections in place to ensure that public funds did not unduly enrich broadband providers, for example:

- The grant available for broadband infrastructure investments within the Rural Development Program is set at a level that requires private investment. There is no fixed standard for the level of the grant, but the grant should not make it economically more beneficial to invest in rural areas compared to urban areas.
- Government authorities look at broadband provider profits 5 years after the development of the government funded broadband. If the profit exceeds the average profit, the authority will require that an amount that corresponds to the granted funds is paid back;
- When the broadband infrastructure is in place, the provider receiving aid must ensure that the infrastructure is available to several operators at the same time and is technology-neutral. Third party operators should be allowed access to broadband, such as dark fiber, in a non-discriminatory fashion for a period of at least seven years. The seven-year period can be extended if the Board of Agriculture estimates that the proprietor of the broadband infrastructure has a significant influence on the market.

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<sup>2</sup> 80.1% of rural homes in Sweden have access to 30+ Mbps speeds, 46.2% of rural households in California have access to 25+ Mbps speeds. See European Commission, “Digital Scoreboard – Sweden” (2017), <https://digital-agenda-data.eu/charts/country-profiles-the-relative-position-against-all-other-european-countries/embedded#chart={%22indicator-group%22:%22broadband%22,%22ref-area%22:%22SE%22,%22time-period%22:%222017%22}> (last accessed September 19, 2018); Federal Communications Commission, *2018 Broadband Deployment Report, Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, FCC 18-10, Table D1 (2018).

<sup>3</sup> “To spur broadband deployment in rural areas, the Swedish government allocated \$820 million to stimulate the infrastructure roll out, including \$250 million in grants to communities to build local broadband networks, both in the towns and in the surrounding countryside, and another \$250 million in tax relief amounting to 50 percent of the cost to build the network to homeowners and businesses to spur development of network infrastructure in homes and buildings. The grants were limited to those communities with no existing broadband providers and the procurement process had to be open and operator-neutral. Moreover, municipalities had to provide at least 10 percent of the cost of building the network with government support limited to a one-time subsidy for 5-year contracts. In addition to government grants, operators themselves estimate that they invested more than \$1 billion in these government-supported projects from 2001 to 2007.” The Information Technology and Innovation Foundation, *Appendix G: Sweden* (2018), <http://www.itif.org/files/2008BBAppendixG.pdf> (last accessed September 19, 2018).

Within those seven years the price of access will be set in line with comparable services.<sup>4</sup>

A defining characteristic of the Swedish model is that the public did not fully fund the infrastructure and they did not hand over taxpayer money without receiving something of worth in exchange, namely lower prices and more competition. If the Commission proceeds to fully fund rural projects, as many unserved and underserved areas in the state and CASF grants tend to cover, consumers should at least see commensurate consumer benefits such as higher speeds, lower prices or open access requirements.

**1. How should the CPUC implement the funding level for a CASF infrastructure application pursuant to Pub. Util. Code Sec. 281(f)(13)?**

**a. Defining Location and Accessibility**

Joint Consumers recommend allowing applicants to list reasons why the location and accessibility of a certain project requires greater funding levels. This approach allows the Commission to see a full universe of issues related to the funding needs of that particular location and what makes accessibility challenging from the perspective of the applicant and avoids the impossible task of trying to capture all the nuances of location and accessibility in one static definition. The Commission could choose to revisit this issue after a set period of reviewing applications (two to three years for example) that attempt to justify their funding requests through location and accessibility issues.

**b. Significant Contribution**

The Ruling asks for “factors” to determine whether a project makes a “significant contribution” to the program goals. While Joint Consumers agree that one possible factor is the

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<sup>4</sup> OECD, *Financing of the Roll-Out of Broadband Networks*, DAF/COMP/WP2/WD(2014) 4-5 (2014), <http://www.konkurrensverket.se/globalassets/om-oss/financing-of-the-the-roll-out-of-broadband-networks.pdf> (last accessed September 19, 2018).

number of households to be served by the project,<sup>5</sup> as well as projects that make progress towards economic growth and job creation,<sup>6</sup> Joint Consumers lack the data to provide an exclusive list of factors toward “significant contribution” in context of the CASF program. However, as a general principle, the commission should review an application for significant contributions, in part, by using Consortia regions to break down the households proposed to be served, considering the economic viability of a non-funded project in that area, and comparing the estimated cost to reach these homes. A project that makes a significant contribution should be in an area that is not economically viable for market-based broadband deployment (e.g. low-income communities or less population-dense areas) and that will cover an entire project area such that future potentially duplicative CASF projects are not necessary in that location. Projects that make progress towards economic growth and job creation are those that are affordable for residents and offer bandwidth and service quality minimums necessary to ensure robust services to the broadest community of residents.

## **2. Additional Factors to Include in Funding Determinations**

The Commission should consider additional factors in its funding determinations. Joint Consumers propose that the Commission consider the affordability, service quality, and targeted populations within a project. The Commission could consider a project more favorably if the project serves low-income communities, but this additional funding should only come if the project funded provides broadband to low-income households at a level that is affordable, and

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<sup>5</sup> 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 percent of California households in each consortia region, as identified by the commission on or before January 1, 2017. The commission shall be responsible for achieving the goals of the program. Pub. Util. Code Section 281(b)(1)(A).

<sup>6</sup> The commission shall develop, implement, and administer the California Advanced Services Fund program to encourage deployment of high-quality advanced communications services to all Californians that will **promote economic growth, job creation, and the substantial social benefits of advanced information and communications technologies**, consistent with this section and with the statements of intent in Section 2 of the Internet for All Now Act (emphasis added). Pub. Util. Code Section 281(a).

sufficient in terms of service quality (i.e. data caps, bandwidth, latency). Therefore, included within a request for additional funds should be data regarding service quality guarantees, affordability, marketing plans to low-income communities and communities of color, as well as data on the number of low-income households reached. If the Commission finds that the service exceeds the standards set by the Commission, the project should be eligible for additional funding. Joint Consumers also agree that another factor could be unserved anchor institutions that provide connectivity for communities during emergency situations and provide ongoing health and safety services broadly throughout the project area.

Joint Consumers offer the following suggestions on how to objectively and reasonably implement consideration of these additional factors:

- Service Quality standards should be like the FCC Minimum services standards mechanism in the LifeLine program to the extent possible. This is pegged as what the “substantial majority” of American consumers subscribe.<sup>7</sup> This standard would disincentive CASF project from providing second class services. For example, the 2018 FCC minimum service standards set a 1000 GB data cap minimum and an 18/2 Mbps minimum for fixed broadband speeds;<sup>8</sup>
- Affordable broadband pricing should be \$25 or less to be comparable to existing low-income plans, and pricing levels seen in other CASF programs;<sup>9</sup>
- Marketing plans should show that provider has considered its market and has a strategy to reach all households in their project area, with particular emphasis on communities particularly lagging behind the digital divide. The Commission’s role in this is to ensure that the public has the information necessary to access publicly funded infrastructure. Therefore, these plans should, at a minimum include the following:
  - A list and description of target or niche markets.

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<sup>7</sup> Federal Communications Commission, *Third Report and Order, Further Report and Order, and Order on Reconsideration*, WC Docket No. 11-42 In the Matter of Lifeline Link Up Reform and Modernization, FCC 16-38, para. 73 (2016).

<sup>8</sup> See Federal Communications Commission, *Wireline Competition Bureau Announces Updated Lifeline Minimum Service Standards And Indexed Budget Amount*, WC Docket No. 11-42, In the matter of Lifeline Link Up Reform and Modernization, DA 18-739 (2018), <https://docs.fcc.gov/public/attachments/DA-18-739A1.pdf> (last accessed September 19, 2018).

<sup>9</sup> Race Communications offers a \$25 25/25 Mbps service with unlimited data. See Race Communications Services, <https://www.race.com/services/> (last accessed September 19, 2018).

- A description of services, and research to understand the services customers require.
- A description of marketing and promotional strategies. Will there be networking, direct marketing, advertisements, training programs etc.
- Establish marketing goals that are quantifiable.

### **3. Values for CASF Eligibility Criteria**

The Commission asks what are appropriate values, expressed as points or percentages for each potential factor in the CASF eligibility criteria. Assuming that this refers to CASF funding levels, Joint Consumers supports limiting the values for each factor in determining CASF funding such that only projects that bring significant value to taxpayers through open access rules, public/private partnerships, or high service quality/affordability components receive 100% funding. Therefore, factors listed in Section 281(f)(13) of the Public Utilities Code, such as an inaccessible location or the use of existing communications infrastructure, should only provide partial “credit” toward increased funding and leave room for additional factors that would ensure projects receiving additional funding also include infrastructure that will be used to develop affordable and robust plans. Section 281(f)(13) notes that the Commission must consider specific factors, including those listed, but does not state that the existence of those factors alone must qualify a project for increased funding, leaving the Commission discretion to add factors that move CASF closer to its universal access goal.

#### **B. Affordable Broadband Offering Requirement**

The Commission asks if the CASF program should require grantees to offer affordable broadband service plans. Affordable service plans should be a condition of receiving funding beyond the 60% mandated by CASF program rules, especially in low-income areas. Driving this

recommendation is a recognition that broadband affordability is a major barrier to adoption<sup>10</sup> and the lowest income California households are 42 percent less likely to have home broadband than the richest.<sup>11</sup> Considering that the rural areas in California are generally lower-income than urban ones,<sup>12</sup> and lag behind in adoption,<sup>13</sup> this requirement is necessary to ensure those that have access to CASF funded infrastructure can actually take advantage of the benefits and afford the services made available by the new networks. Today, California's average broadband price is up to three times more expensive than in other developed economies;<sup>14</sup> presumably adding infrastructure and competitive services should allow for lower prices and increased quality. Based on these facts, and the language of Internet For All Now Act, an affordability requirement is consistent with the spirit and language of the CASF program.<sup>15</sup>

The legislature directed the Commission to implement CASF in a way that promotes economic growth, and allows *all Californians* to access the substantial social benefits of broadband. Without affordable plans, low-income Californians in rural areas will be unable to access these benefits. Further underscoring this point is the statement of intent in Section 2 of the

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<sup>10</sup> 69 percent of Californians without broadband connectivity mentioned price as a reason for not having adopted home broadband. See California Emerging Technology Fund (CETF), "Broadband Internet Connectivity and the 'Digital Divide' in California – 2017," (2017).

<sup>11</sup> *Id.*

<sup>12</sup> California's median per-capita income in 2016 dollars is \$43,728 for rural households compared to \$55,662 for urban ones. See USDA, *State Fact Sheets: California*, Economic Research Service (2018), <https://data.ers.usda.gov/reports.aspx?ID=17854> (last accessed September 19, 2018).

<sup>13</sup> Rural households are 10% less likely to have home broadband. Andrew Perrin, *Digital Gap Between Rural and Nonrural America Persists*, Pew Research (2017), <http://www.pewresearch.org/fact-tank/2017/05/19/digital-gap-between-rural-and-nonrural-america-persists/> (last accessed September 19, 2018).

<sup>14</sup> European Commission (EC), "Broadband Internet Access Cost (BIAC) Autumn 2015 - Prices as of September-October 2015," (2016) (*hereafter* European Commission BIAC 2015).

<sup>15</sup> The commission shall develop, implement, and administer the California Advanced Services Fund program to encourage deployment of high-quality advanced communications services to all Californians that will **promote economic growth, job creation, and the substantial social benefits of advanced information and communications technologies**, consistent with this section and with the statements of intent in Section 2 of the Internet for All Now Act (emphasis added). Pub. Util. Code 281(a).

Internet For All Now Act stating: “(b) It is the intent of the Legislature 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.**” (emphasis added).<sup>16</sup> The focus on adoption of broadband technology for all residents and the insistence on *quality* universal access provide justification for incentivizing long-term, high quality, affordable broadband plans in CASF project areas.

Overall, 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.<sup>17</sup> When looking at standalone pricing, Californians pay an average of \$73 a month for 30-100 Mbps broadband plans compared to \$43 in the EU.<sup>18</sup> For California to achieve the legislative goal of making our state a “national leader and globally competitive in the deployment and adoption of broadband technology” broadband prices should assure that all Californians have access to robust services. Therefore, Joint Consumers urge the Commission to find a solution or funding incentive where broadband offerings by CASF recipients are affordable. For example, services must be much more accessible than the \$160 per month some rural residents are paying for 18-25Mbps fixed wireless broadband.<sup>19</sup> Joint Consumers believes that a “low-income” plan should offer 25 Mbps service at \$15 or less with broad eligibility criteria and requirements that carriers continue to offer these plans. This rate is similar to what Charter charges for its 30 Mbps “Spectrum Assist” low-income plan and \$25 is the cost for Race Communication’s 25 Mbps retail offering.<sup>20</sup>

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<sup>16</sup> Section 1 of the Internet For All Now Act (AB 1665), [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB1665](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB1665).

<sup>17</sup> European Commission BIAC 2015.

<sup>18</sup> *Id.*

<sup>19</sup> *See e.g.* Cal.net Wireless Internet Costs, <https://www.cal.net/internet> (last accessed September 19, 2018).

<sup>20</sup> Spectrum Internet Assist, <https://www.spectrum.com/browse/content/spectrum-internet-assist.html> (last accessed September 19, 2018).

Joint Consumers recognize that bandwidth and cost constraints may make a \$15 or \$25 price target uneconomical. Providers that cannot offer robust high-bandwidth service at those prices because geography, topography or other factors are driving high costs, but still request additional funding levels beyond 60%, should provide proof to the Commission showing that their proposed pricing is the lowest viable alternative for low-income households. This proof should include data on cost drivers such as maintenance costs, marketing costs, installation fees, interest payments, shareholder return, the expected number of low-income subscriptions compared to “regular” subscriptions etc. Should this data satisfy the Commission, and the project meets other applicable factors in compliance with Section 281(f)(13) as discussed above, the applicant could be eligible to receive additional funding up to 100%. This process, if designed correctly, will ensure that households receive the lowest possible price for access to taxpayer funded infrastructure.

Finally, price is not the only consideration when looking at whether an affordable service plan is truly providing “quality universal access” as intended by the IFAN act.<sup>21</sup> For the reasons stated above in Section 2, the Commission should ensure low-income households on affordable plans receive service that has sufficient speeds, latency and data allowances (if any). One metric the Commission can use in determining if an offering is “quality,” is to use the same minimums as the federal Lifeline for Broadband program. Although there is significant uncertainty in the federal program, incentivizing CASF infrastructure deployment that qualifies for Lifeline broadband subsidies would help low-income Californians afford service.

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<sup>21</sup> Section 2 of the Internet for All Now Act (AB1665).

### C. Scoring Criteria

The ALJ Ruling seeks comments on whether the current scoring criteria should be eliminated and replaced “with a different evaluation process focused on eligibility, performance standards and funding level determinations.”<sup>22</sup> While Joint Consumers generally support streamlining the Commission’s processes to determine whether to fund a project, the scoring criteria and the process to determine funding level serve different purposes.

If the Commission seeks to streamline the scoring criteria and the application acceptance process, Joint Consumers are open to working with the Commission on streamlining that process but the process should not be eliminated. The scoring criteria is used by Staff to screen whether an application’s proposed project area should be considered a priority and accepted to receive any funding.<sup>23</sup> Staff approve higher-ranking applications as CASF-grant recipients before lower-ranking applications.<sup>24</sup> The scoring criteria is also used to determine which application should be approved if more than one application overlaps in an area. During the July 25, 2018, workshop, parties heard that there have been few – if any – applications requesting funding for overlapping project areas, yet the scoring criteria still serves a role in determining whether an application should be accepted to receive any funding.

After Staff uses the scoring criteria to determine that an application should be accepted, Staff needs to make another determination: the level of funding that the project should receive. How to determine whether an application should receive a higher level of funding than the statutory minimum is the subject of many of the questions in the ALJ’s Ruling. If the Commission approves a CASF infrastructure grant application, CASF rules require that project

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<sup>22</sup> ALJ Ruling at p. 5.

<sup>23</sup> Decision 14-02-018, Appendix 2, p.19 (Issued March 4, 2014).

<sup>24</sup> Amended Scoping Memo, February 14, 2018, Appendix C at p. 18.

receive at least 60% funding.<sup>25</sup> If the Commission eliminates the scoring criteria and replaces it with a funding determination, essentially the Commission agrees to fund all applications' projects by at least 60%. Yet, not all applications may be worthy of approval and CASF funding. By maintaining the scoring criteria, the Commission asserts that it will not accept every CASF application and that it reserves the right to prioritize which applications should be approved as a higher priority project. For those reasons, the Commission should not forego an initial determination of whether an application should be approved to receive any funding and it should retain the scoring criteria.

#### D. Administrative Expenses

Joint Consumers generally support balancing the need to protect the Fund with the need to fund administrative expenses for CASF projects. Joint Consumers are cautious that overly burdensome program rules can reduce the amount of participation in a program, ultimately hurting the vulnerable Californians who are waiting for CASF projects to deliver improved broadband deployment in their areas.

Staff has previously heard from applicants that receiving less than the full amount of funding for a project, including administrative expenses, "is burdensome because some applicants have capital constraints and [a] project may not be profitable, particularly for a smaller company."<sup>26</sup> While Joint Consumers do not have sufficient data to suggest specific amounts for administrative cost funding, we encourage the Commission to consider whether the amount of administrative costs reimbursement could unduly burden smaller companies compared to larger companies that can better absorb the costs. Joint Consumer suggest that the

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<sup>25</sup> Decision 14-02-018, Appendix 2 at p. 2.

<sup>26</sup> Draft Staff Proposal for the May 25, 2017 CASF Workshop at p. 5 (dated May 17, 2017) (discussing the burden on a small company applicant who receives only 60-70% of a project's funding).

Commission look to other public purpose programs to the extent they are analogous for guidance on this matter.<sup>27</sup> If the Commission adopts an overly generous reimbursement it will ultimately reduce available funding for the infrastructure projects themselves. Yet, if the adopted amount is too low it could ultimately discourage certain CASF applicants and broadband infrastructure deployment. If the Commission finds that an administrative cost reimbursement amount does unduly burden smaller companies, the Commission could consider using a different administrative cost reimbursement level for different sized companies.

#### E. Treatment of CAF Providers Seeking CASF Funds

The ALJ Ruling seeks comment on how to treat CAF census blocks after the CAF project is complete and the CAF-provider seeks CASF funding for that same census block area. The Commission should consider the more generic scenario of how to determine whether a census block is eligible for CASF funding after a CAF II project has been complete in that census block, regardless of whether the CAF-provider, another provider, or no provider, seeks CASF funding for that same census block.

The Commission correctly identifies that Public Utility Code section 281(f)(C)(i) prohibits CASF projects “in a census block where an existing facilities-based broadband provider has *accepted* federal funds for broadband deployment from Phase II of the Connect America Fund.”<sup>28</sup> After accepting CAF II funds, a CAF provider has until 2020 to complete its CAF II project. The Commission should monitor those CAF projects for progress and require CAF-providers to report their CAF II project’s completion to the Commission regardless of whether the Commission anticipates the CAF-provider or another provider will seek CASF funding for that same project area after the CAF project is complete.

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<sup>27</sup> See, G.O. 153, Section 9.3.9.

<sup>28</sup> Pub. Util. Code sec. 281(f)(C)(i) (emphasis added).

Once the CAF-provider informs the Commission that a CAF II project is complete, the Commission should determine whether the parts of the census blocks beyond that completed-project area are unserved or underserved for the purpose of the CASF program.<sup>29</sup> To make this determination, the Commission should rely on its standard analysis to identify unserved and underserved communities in California. The Commission's determination will necessarily take time and the completed-CAF-II-project census blocks should be ineligible for CASF applications for a reasonable but specified amount of time, e.g. 3 months, while Staff determines whether areas of those census blocks are eligible for CASF funding. If Staff determines a census block is eligible for CASF funding, the CAF-provider and other providers can then apply for CASF funding to build in that census block, and the Commission's rules for right of first refusal and challenges would apply as if the census block did not receive CAF funding.<sup>30</sup>

#### F. Project Summaries

The Ruling requests comment on adding elements to an existing project summary report. It is critical that the Commission have access to timely and complete reports for each CASF project to ensure ratepayer subsidy money is being spent wisely; however, overly burdensome busy work type reports can be counterproductive, especially for smaller companies. It appears that some of these proposed additions are important for Commission oversight, but may be included in current elements of the reports or elements that are proposed to be included from the

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<sup>29</sup> The census block cannot receive CASF funding if the existing provider accepts CAF II funding, regardless of the technology (e.g. satellite) used for broadband deployment. Parties have expressed concerns that some technology, e.g. wireless and satellite, may not satisfy California's goal of 98% broadband access because of those technologies' reliability issues. *See, e.g.*, CETF Reply Comments on Phase II Issues at p. 1 (dated May 1, 2018). Therefore, once the CAF II project is complete, the Commission will need to assess whether a census block is eligible for CASF after a CAF-funded deployment.

<sup>30</sup> Resolution T-17590 (Issued December 14, 2017). *See also*, Joint Consumers Opening Comments on the Phase II Issues at pp. 14-15 (dated April 16, 2018).

February 2018 staff proposal. Joint Consumers reserve the right to comment further on whether the Commission should require applicants to provide additional information in project summaries.

### III. CONCLUSION

Joint Consumers respectfully submit these comments on the ALJ's Ruling.

Dated: September 21, 2018

Respectfully,

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