



Carolyn McIntyre  
President

1001 K STREET, 2<sup>ND</sup> FLOOR  
SACRAMENTO, CA 95814

916/446-7732  
FAX 916/446-1605  
www.calcable.org

December 7, 2020

**VIA EMAIL AND U.S. MAIL**

Robert B. Osborn  
Director, Communications Division  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102-3298

**RE: Resolution T-17712: Approval of funding for the grant application of Plumas Sierra Telecommunications (U-7218-C), from the California Advanced Services Fund up to the amount of \$3,707,475 for the Scott Road Project located in Lassen and Sierra Counties**

Dear Director Osborn:

The California Cable and Telecommunications Association (“CCTA”) hereby submits these opening comments related to the above-captioned Draft Resolution that would award an infrastructure grant from the California Advanced Services Fund (“CASF”).

CCTA is raising the same concern with four of the CASF Draft Resolutions issued November 13, 2020, that include grant funding for middle mile infrastructure and include the following statement, or substantially similar version of this statement:

“The CASF-funded portion of the [project name] middle-mile fiber network shall be made available for wholesale access to other potential CASF grantees at reasonable rates and terms. These reasonable rates shall be at cost.”<sup>1</sup>

This language tracks the language in the Staff Proposal in R.20-08-021 regarding a proposal for an “open access” requirement on all future CASF grants.<sup>2</sup> Other than the sentence quoted above, the Draft Resolution does not include any discussion of the basis or impact of this sentence, nor any associated findings of fact, conclusions of law or ordering paragraphs.

To the extent the inclusion of the sentence quoted above in the Draft Resolutions is intended to impose an “open access” mandate on CASF grant recipients proposing middle-mile facilities as part of their CASF projects, each of the resolutions, to the extent not voluntarily agreed to by the applicant, would constitute factual and legal error. CCTA’s position is based on all of the reasons

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<sup>1</sup> Draft Resolution T-17712 at 6; Draft Resolution T-17717 at 8, Draft Resolution T-17716 at 6; and Draft Resolution T-17720 at 5.

<sup>2</sup> Staff Proposal attached to “Assigned Commissioner’s Scoping Memo and Ruling” (October 26, 2020) at 4.

December 7, 2020

Page 2

set forth in CCTA's opening and reply comments filed on the "open access" provision of the Staff Proposal in R.20-08-021.<sup>3</sup> These reasons include that Public Utilities Code Section 281 does not permit the CPUC to impose an "open access" mandate, the existing CASF rules for infrastructure grants does not include "open access" requirements, and "open access" was not even under consideration in the CASF proceeding at the time the pending applications were submitted in May 2020. Moreover, imposition of this new obligation on these applicants would be impermissible given that the CASF rules in place at the time of the application -- and to this date -- did not provide notice that such access be provided by grant recipients.

Accordingly, CCTA objects to the inclusion of the sentence set forth above in the Draft Resolution to the extent that (a) it could be deemed or interpreted to pre-determine an issue the CPUC has identified for resolution in a pending proceeding; and (b) it would impose a wholesale access at cost-based rates requirement without an applicant voluntarily proposing such as part of its application.

Respectfully submitted,

*Jacqueline R. Kinney*

Jacqueline R. Kinney.

cc: Louise Fischer, CPUC Communications Division (via email)  
Jessica Honeyfield, CPUC Communications Division (via email)  
CASF Distribution List (via email)

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<sup>3</sup> Comments of CCTA (filed November 6, 2020) at 3 to 10; and Reply Comments of CCTA (filed November 13, 2020) at 1 to 7).