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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-17716: Approval of funding for the grant application of Race Telecommunications, Inc. (U-7060-C), d/b/a Race Communications, from the California Advanced Services Fund (CASF) up to the amount of \$7,603,656.30 for the Gigafy Williams Project located in Colusa County.

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.”¹

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.² 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

¹ 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.

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

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applicant, would constitute factual and legal error. CCTA's position is based on all of the reasons set forth in CCTA's opening and reply comments filed on the "open access" provision of the Staff Proposal in R.20-08-021.³ 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)
Vincent Coppey, CPUC Communications Division (via email)
CASF Distribution List (via email)

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