BEFORE THE PUBLIC UTILITIES COMMISSION OF

THE STATE OF CALIFORNIA

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REPLY COMMENTS OF THE UTILITY REFORM NETWORK AND THE CENTER FOR ACCESSIBLE TECHNOLOGY ON THE COMMMISSION'S ORDER INSTITUTING RULEMAKING

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I. INTRODUCTION

In accordance with the schedule set out in the Order Instituting Rulemaking (OIR) Regarding Broadband Infrastructure Deployment and to Support Service Providers in the State of California, issued on September 18, 2020, and the clarification provided by Administrative Law Judge Glegola via email on September 25, 2020, The Utility Reform Network (TURN) and The Center for Accessible Technology (CforAT) (collectively Joint Consumers) submit these reply comments on the issues identified in the OIR.

II. THE COMMISSION HAS THE AUTHORITY TO ADDRESS BROADBAND

A. Carriers Go Too Far to Emphasize the Distinctions Between Facilities and Services

Some carriers attempt to draw a distinction between the Commission's authority to regulate the tangible facilities that make up the communications providers' networks that crisscross the state as compared to what they argue is a lesser level of authority to regulate the services offered over those facilities.[1] Indeed, this argument has previously been a common refrain mostly argued in the context of the state statute that preempted the Commission's authority to regulate services offered with Internet Protocol technology; with the Legislature's decision to allow that statute to sunset, the associated argument should also be put to rest.[2]

Joint Consumers agree that the Commission has clear and comprehensive authority over network facilities that allow it to carry out the Legislative goal of ensuring that all Californians

[1] Frontier Comments at p. 3; Cox Comments at p. 18; Charter Comments at p. 23; Small LECs Comments at p. 3.

[2] Public Utilities Code §710(h) ("This Section shall remain in place until January 1, 2020 and as of that date is repealed..."); See also, AB 1366 (2019, Daly and Obernolte) (attempting to renew VoIP preemption provisions and failing); See also, SB822 (Ch. 976, Stats 2018, codified at Civil Code §3100, et seq) (Legislative finding that, "Almost every sector of California's economy, democracy, and society is dependent on the open and neutral Internet that supports vital functions regulated under the police power of the state…")

have access to advanced services, competitive choices to meet individual customer needs, and safe and reliable services.[3] The Commission has used its authority to adopt strong pole attachment and conduit access processes, clear rights of way and interconnection requirements and public safety measures through adoption of network resiliency and police power mandates.[4]

Joint Consumers do not agree, however, that the Commission's authority over the services that use these facilities are as limited as some parties contend. While the Commission's jurisdictional reach may vary as to the services and service providers that use the communications networks in the state, the Commission has the necessary authority to support the statutory mandates of nondiscriminatory access to affordable and reliable advanced services.[5] The processes, procedures, and policies adopted by the Commission with this authority to carry out its mandate can take many forms, including the incentive programs that many of the carriers support. But the Commission's authority is not limited to funding incentives for carrier action. The regulatory boxes that the carriers attempt to draw with bright-line distinctions -- facilities versus services, information versus telephony, and interstate versus intrastate -- are legal fictions that belie the fact that the treatment of these issues are continually in flux.[6] The carriers' warnings to the Commission to not apply traditional public utility style regulation on broadband services also amounts to hyperbole and an overstatement of the Commission's stated intent in this proceeding.[7] Tellingly, none of the provider's opening comments clearly acknowledge the

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[3] OIR at p. 5; See also, Small LECs Comments at p. 3 (Commission has some authority over facilities used by public utilities; Frontier Comments at p. 3 (authority extends to infrastructure used for telephone service.)
[4] *Id*., p. 4-6.
[5] See, Joint Consumers Comments at p. 34-36 (discussing state and federal authority supporting Commission action in this OIR.)
[6] Comcast Comments at p. 17-19; Charter Comments at p 23-24; Cox Comments at p. 18; CCTA at p. 3; Frontier at p. 4; AT&T Comments at p. 3.
[7] See, for example, Charter Comments at p. 24; Frontier Comments at p. 4.

shift in state authority discussed in *Mozilla* where the review Court found that targeted state authority over information services was permissible, given the vacuum created by the FCC's removal of broadband internet access service from its previous Title II status.[8] In addition, no provider discusses the long and complicated history of cooperative federalism, safe harbors, and mixed jurisdictional services that is ever-present in the field of communications regulation and that would provide the Commission with the basis to exert jurisdiction over targeted elements of BIAS and other broadband service to accomplish stated public policy goals mandated by state and federal legislation.[9]

In light of the shifting regulatory schema and the potential need for Legislative action to cement certain authority, Joint Consumers urge the Commission to move forward and to analyze jurisdiction in the context of each proposal.

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[8] See, Joint Consumers Comments at p. 34, citing Mozilla at FCC 940 F.3d 1 (D.C. Cir. 2019); Comcast comments at p. 18 (acknowledging that the *Mozilla* Court limited the FCC's preemption authority over state broadband regulation, requiring a case-by-case conflict preemption analysis to prevent state action.) The carriers cite to Charter Advanced Services v. Lange, 903 F.3d 715 (8th Cir 2018) and Minn Pub. Util. Comm'n v. FCC 483 F.3d 570 (8th Cir 2007) to support their claims of federal preemption that would occupy the field. However, those cases stand for the proposition that VoIP is an information service, thus limiting a state commission's jurisdiction, which not disputed here. However, the Commission has noted that these 8th Cir cases are not controlling and has rejected the carriers' discussion of these cases as over broad. (see, D.20-09-012 (rejecting wireline carriers' Application for Rehearing of D.19-08-025)).

[9] Pub. Util Code Section 285 (Commission authority to set safe harbor for collection of surcharges on VoIP intrastate calls); *Order Instituting Rulemaking (R.11-01-008)* at pp. 1-2 and D.13-02-022 (R.11-01-008) (Legislative authority to collect surcharges from VoIP); *Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45 et al., Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, 7531-32, 7545, paras. 23, 44, 53 (2006)(finding intrastate component of interconnected VoIP and setting safe harbor for intrastate revenues at 37.1%); See, also re: cooperative federalism, 47 USC §1302(a) (Section 706 requires both federal and state commissions to "encourage the deployment" of advanced telecommunications services through regulatory policies and by removing barriers to investment); 47 USC §254(f) (gives states authority to design contribution mechanisms to ensure all telecommunications carriers contribute in an equitable and nondiscriminatory basis while not burdening federal support); 47 USC §254(b) (universal service should support "advanced telecommunications and information services.")

B. Affiliates Must Appear Before the Commission

Several carriers take issue with the Commission's notice in its OIR that it may promulgate rules that affect the affiliates of the Respondents to this proceeding and its direction to the Respondents that they must ensure their affiliates "appear as parties to this proceeding, or they may submit responses in this proceeding on behalf of those affiliates.[10]" Yet this language is required upon the adoption of a Commission Rulemaking to provide due process notice to all appropriate respondents and their affiliates.[11] Joint Consumers note that it is likely that the Respondents to this proceeding raising concerns regarding the broad nature of this notice, would also object to any attempt by the Commission to later include findings or orders that affected the Respondents' affiliates for lack of proper of notice had the OIR stayed silent.

However, the carriers' concerns that the Commission will "compel" affiliates to participate in this proceeding are misplaced. The OIR makes no attempt to compel participation by affiliates, but instead it appropriately places the obligation on the regulated entity to keep its affiliates informed of this proceeding and, in turn, to provide relevant and necessary information to the Commission regarding affiliate operations and business practices within the scope of this proceeding.[12]

The carriers also provide an unduly narrow interpretation of the Commission's jurisdiction over affiliates of regulated entities. Each of the Respondents has a CPCN and is subject to applicable Commission regulation and obligation, and also benefits from holding a

[10] OIR at p. 15; Cox Comments at p. 18; Frontier Comments at p. 4; Charter Comments at p. 22-23.
[11] Pub. Util. Code Section 1701 et seq., Rules of Practice and Procedure Rule 6.1 (all Rulemakings must be noticed to interested parties).
[12] For example, Joint Consumers comments, at p. 30, (access to broadband affiliate data, including service offerings and subscription data, is critical for the Commission to "effectively design programs that will remedy California's digital divide.")

CPCN for numbering resources, interconnection, rights of way, pole attachments, and other advantages. The Commission can exercise its statutory authority to reach corporate affiliates of these CPCN holders for many purposes, including those necessary to carry out the Commission's own statutory mandates and police powers.[13]

All the parties to this proceeding acknowledge the critical juncture that this OIR represents and the importance of this issue to the economic and social development of California. And yet, several carriers make clear that their willingness to participate hinges on the voluntary nature of the participation and the requirement that the Commission stay within their jurisdictional lanes as narrowly defined by the carriers.[14] Therefore, Joint Consumers urge the Commission to ensure that it has the commitment from all necessary Respondents to fully engage and participate in this critical docket, including producing necessary information and participation by critical corporate affiliates. The consumers of California should not be held hostage to arcane corporate structure design and corporate veil barriers that attempt to prevent the Commission from doing its job to support access to robust, affordable, and high-quality broadband services.

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[13] Pub. Util. Code Section 312 (commission may issue subpoenas to the same extent as courts of record); Pub. Util. Code Sections 314, 314.5 (Each person employed by the Commission has the authority to inspect the books and records of "any business that is an affiliate or subsidiary" of a Commission regulated entity, including a telephone corporation); Pub. Util Code Section 797, 798 (Commission jurisdiction over affiliate transactions); Pub. Util. Code Section 852-854, 856 (legislative authority to investigate the public interest of a sale or encumbrance of utility property involving an affiliate or subsidiary of a regulated utility.) See also, the Commission's affiliate transaction requirements and reporting obligations, including D.93-02-019 (R.92-08-008) adopting affiliate transaction requirements for telephone corporations.

[14] Frontier Comments at p. 4-5 (Commission should "stay within its jurisdictional purview"); Cox Telcom Comments at p. 18 (participating on a voluntary basis and reserves the right to decline requests that are not within the Commission's jurisdiction); Charter Comments at p. 23 (submits comments voluntarily without waiving objections to the Commission's OIR naming Charter as a respondent).

C. The Commission Must Address the Universal Service Surcharge Base

While many of the carriers express support for expansion of existing funding programs such as CASF and CTF, or additional incentive programs to support efforts to improve deployment and affordability of broadband service, they generally fail to grapple with the question of funding for any program expansions.[15] The Commission has noted the need to reconsider the existing surcharge base for funding that supports public purpose programs.[16] Joint Consumers agree, and note that Greenlining and Public Advocates support the recommendation that the Commission take immediate steps to expand the surcharge base, which currently rests exclusively on intrastate voice services.[17] Greenlining appears to recommend that the Commission should hire a consultant to conduct an economic analysis of the costs and benefits of expanding the surcharge base, and a separate legal analysis of potential existing barriers. Joint Consumers do not believe that an outside analysis of potential legal barriers is needed, as the Commission's internal expertise on this issue is sufficient to evaluate the extent of its existing authority as well as the potential for recommending legislative action.[18] To supplement the Commission's own analysis, the parties can be invited to brief their understanding of the Commission's existing surcharge authority, potentially in response to a report prepared by the Commission's staff. This process would allow the surcharge question to be developed more rapidly than would likely be the case if an outside consultant were to be engaged, without

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[15] Charter Comments at p. 31 (applauds use of CASF and CTF, suggests expanding outreach for LifeLine); CCTA Comments at p. 12-14 (review funding needs for CASF, work with existing universal service programs to fund current needs); Comcast Comments at p. 29-30 (use CASF to incentivize broadband).

[16] OIR at p. 3-4 (finding comprehensive jurisdiction, including designing programs to fund network improvements); D.20-10-009 (R.20-02-008) at p. 7 (Commission stating that, "We are committed to expanding access to affordable communications services in a sustainable way" but noting that expansion of the surcharge base "affects multiple Commission programs and their stakeholders and therefore is outside the scope of this [LifeLine] proceeding.") The Commission also has Legislative direction to broaden the surcharge base for LifeLine, see, Cal. Pub. Util. Code §871.7, subd. (d)(2) (calling for "equitable distribution of the funding burden" to avoid disproportionate impacts on regulated utilities' ratepayers)

[17] Joint Consumers Comments at pp. 34-36; Greenlining Comments at pp. 7-8; Public Advocates Comments at p. 4. See, also, AT&T Comments at p. 8 (discussion of funding of LifeLine and other efforts through general appropriations).

[18] Greenlining Comments at p. 7-8.

sacrificing a thorough legal review. Joint Consumers support the use of an outside consultant to conduct an economic analysis, on a parallel track as the legal analysis, to help consider potential surcharge levels and how the funding collected from an expanded surcharge could most effectively be used to expand access to broadband services.

III. CALIFORNIA CUSTOMERS LACK ADEQUATE BROADBAND CHOICES

Joint Consumers note that broadband ISPs, especially cable broadband ISPs, focus their comments on a discussion of their infrastructure deployment gains, which are a bright spot for those California households that are fortunate enough to reside in a cable company's footprint.[19] However, even as the cable broadband ISPs assert the "highly competitive" nature of their markets,[20] none of them acknowledge that the cable companies do not compete against one another. This is a major shortcoming in California broadband markets, as cable broadband offers customers a broadband platform that has much greater bandwidth potential than the DSL broadband facilities offered by cable's telephone company rivals. Consequently, outside of limited areas where there is a fiber overbuilder, there is not much customer choice for high speed broadband where telephone company DSL is the only wireline broadband option other than cable.

Joint Consumers note the stark contrast between the comments of AT&T, the state's largest broadband ISP, and those of the cable providers. AT&T's opening comments do not brag about the AT&T network's transition from Gigabit-capable residential broadband facilities to 10 Gigabit facilities, as the cable companies do.[21] AT&T makes little mention of its own advanced

[19] Comcast Comments, pp. 5-6; Charter Comments, pp. 3-5; Cox Comments, p. 3.
[20] CCTA Comments, Exhibit A, p. 3; Cox Comments, p. 4.
[21] Comcast Comments, pp. 5-6; Charter Comments, P. 28; Cox Comments, p. 8.

broadband deployment plans, other than to note that "where it is cost effective" AT&T will consider using fiber facilities rather than copper to rebuild in locations where its outside plant has been destroyed by fire or other natural disasters.[22] As was noted by Joint Consumers in opening comments, AT&T's recent announcement that it is grandfathering its DSL services, apparently without wireline replacement, should be of significant concern to this Commission.[23] AT&T should not be allowed to migrate DSL customers to inferior broadband services, or withdraw wireline broadband.

Thus, reviewing the comments of broadband service providers as a whole reveals the unfortunate truth about California broadband markets. "Competition" and customer choice are limited, especially for high quality broadband services. Consumers who reside outside of cable company service areas generally have low-quality broadband alternatives, and those who are fortunate enough to reside within a cable company's service area may face monopoly-like prices, terms and conditions for high-quality broadband, such as that consistent with the Executive Order's 100 Mbps download speed.

This underlying lack of choice between multiple wireline broadband providers is not likely to be remedied by mobility services, including 5G options, as 5G service plans generally feature inaptly named "unlimited" plans that are characterized by restrictive data caps.[24] Nor will the lack of customer options be remedied by fixed wireless, existing geostationary satellite broadband, or yet-to-be deployed low earth orbit satellite systems. To date, despite a hands-off approach by state and federal regulators and legislators, which has provided the dominant cable

[22] AT&T Comments, p. 6.
[23] Joint Consumers Comments, p. 17.
[24] See, for example: https://www.att.com/plans/unlimited-data-plans/; https://www.verizon.com/plans/unlimited/ .

and telephone company broadband providers a largely unfettered ability to serve, "the market" has failed to deliver ubiquitous, reliable, affordable, and high quality broadband to California consumers. *If private markets were working as well as the broadband ISPs have asserted to the Commission in this proceeding, there would be no need for the Executive Order or even this OIR, with the plain language statements that many Californians either do not have access to, or do not subscribe to essential broadband services.*

IV. VOLUNTARY LOW-INCOME BROADBAND PROGRAMS ARE NOT SUFFICIENT TO ADDRESS THE DIGITAL DIVIDE

As noted in the OIR, new strategies to address the income-based digital divide are needed in light of the direction provided by the Legislature and now in light of the Executive Order's direction for the Commission to develop tools to help low-income individuals subscribe to affordable broadband plans.[25] Broadband ISPs point to their existing programs to provide low-income broadband service to certain eligible customers as solutions to help close the digital divide. But these programs have limited reach. AT&T indicates that it has "expanded our outreach efforts" associated with AT&T's $10 per month broadband offering.[26] Charter points to its efforts with its "Internet Assist" program.[27] Similarly, Comcast identifies its "Internet Essentials" program.[28] Cox discusses its "Connect2Compete" program that also provides lower-cost access for qualified low-income households with school-aged children.[29] These broadband ISPs also identify additional measures that the companies have taken to make broadband access more affordable during the COVID-19 crisis.

[25] OIR, 4 & 11.
[26] AT&T Comments, p. 2.
[27] Joint Consumers Comments, p. 6.
[28] Comcast Comments, p. 10.
[29] Cox Comments, p. 2.

To be sure, Joint Consumers are supportive of the broadband ISPs efforts to make broadband more affordable for low-income households and are glad to see the broadband ISPs stepping up during the COVID-19 crisis. In order to meaningfully evaluate the effectiveness of these programs, however, Joint Consumers urge the Commission to require broadband ISPs to make detailed information available to the Commission about the operations of the voluntary programs the operate in California, including information on (1) the number of low-income households that are participating in the programs, (2) how long customers subscribe to the programs, (3) the monthly spending associated with program participants, (4) policies with regard to program time limits, (5) upselling activities associated with the programs, (6) reasons customers leave the programs, (7) the results of internal research regarding the operations of the programs, including the effectiveness and accuracy of the eligibility process, and (8) the renewal process. [30] This type of information will be useful to the Commission as it considers its own approach to broadband affordability, and the role that voluntary broadband ISP low-income plans can potentially play.

The Commission should not exclusively rely on the broadband ISP voluntary programs to address the digital divide. The continuing availability of these voluntary broadband ISP affordability programs is not assured, and economic conditions may lead the companies to adopt program modifications or discontinuations that result in curtailed availability. Even under the current program structure, the various providers have inconsistent eligibility requirements, which presents problems in determining the reach of these affordable service options.

[30] See also, CETF Comments, p. 8 (Urging the CPUC to require ISPs and CASF grantees to publicly report data regarding their low income program offerings).

The broadband ISP's affordability programs are not based on a consistent set of eligibility criteria and their eligibility standards can be quite limited. For example, AT&T determines household eligibility based on participation only three qualifying programs: the Supplemental Nutritional Access Program (SNAP), Supplemental Security Income (SSI), or the National School Lunch Program.[31] Spectrum establishes eligibility based on participation in the National School Lunch Program, Community Eligibility Provision, or SSI.[32] Other providers have different, but still limited eligibility standards. Cox allows for a larger set of qualifying factors, but its program is only available to households with schoolchildren in grades K-12. For households that include schoolchildren, Cox established eligibility based on participation in the programs used by AT&T and also households that receive "WIC, LIHEAP, and/or TANF; who receive Tenant-Based Vouchers, Project-Based Vouchers or Section 8 Project-Based Rental Assistance (PBRA); and/or who live in Public Housing."[33] Comcast has a similar list as Cox, but adds Veterans Administration pensions and Tribal Assistance.[34] Based on these differing standards, two households with the same income and same number of family members may not have the same ability to qualify for affordable broadband service, based solely on which provider serves the territory in which they live. It is not reasonable public policy to have low-income broadband eligibility vary depending on the "luck of the draw" based on the household address. A consistent set of eligibility requirements is needed.

AT&T proposes that broadband affordability should be addressed through the California Lifeline program. However, AT&T proposes that tax revenues be utilized to support LifeLine.[35]

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[31] AT&T has also added a set of income based criteria as a temporary qualification measure during the COVID-19 crisis. https://www.att.com/internet/access/
[32] https://www.spectrum.com/browse/content/spectrum-internet-assist
[33] https://www.cox.com/residential/internet/connect2compete.html
[34] https://www.internetessentials.com/get-help#mostasked&all_Documentsneeded
[35] AT&T Comments, p. 9.

Joint Consumers do not believe that the utilization of tax revenues (which would require legislative action in the first instance, and budget allocations every year) would be an appropriate approach to support broadband affordability. Rather, the Commission should move to expand the funding available to support services for LifeLine customers, including affordable broadband, through an expansion of the contribution base. The Commission has been given a directive by the Legislature to ensure that broadband services are widely available and affordable.[36] As discussed in opening comments and above, the Commission's authority to take actions in response to state statute with regard to broadband was confirmed by the D.C. Circuit in the *Mozilla* ruling.[37]

Furthermore, broadband affordability is also an issue for households that do not meet either the broadband ISPs' program qualifications, or the criteria for participation in the California LifeLine program. The lack of choice in broadband markets, with many consumers facing a broadband monopoly,[38] results in high broadband prices. The Commission must evaluate broadband affordability issues for those households that are facing budget challenges, but do not qualify for low-income programs.

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[36] California Public Utilities Code, §709(d).

[37] *Mozilla Corporation, Petitioner v. Federal Communications Commission and United States of America, Respondents, City and County of San Francisco, Et Al., Intervenors*, United State Court of Appeals for the District of Columbia Circuit, No. 10-1051, October 1, 2019, page 134-135, (hereinafter *Mozilla*). https://www.cadc.uscourts.gov/internet/opinions.nsf/FA43C305E2B9A35485258486004F6D0F/$file/18-1051-1808766.pdf

[38] See, for example, Charter Comments, pp. 14-15 where Charter concedes that an unspecified percentage of California households have only one provider. See also, "Profiles of Monopoly: Big Cable and Telecom," Institute for Local Self-Reliance, August 2020. https://cdn.ilsr.org/wp-content/uploads/2020/08/2020_08_Profiles-of-Monopoly.pdf

V. THE COMMISSION SHOULD CLARIFY ITS CONCERNS REGARDING DIGITAL REDLINING

Some broadband ISPs claim that they do not understand the term "digital redlining."[39] Frontier states that "[t]he term "redlining" implies a systematic discrimination in service against certain types of customers, generally on the basis of race or ethnicity."[40] Frontier is correct that redlining is a discriminatory practice that affects communities of color. Importantly, though, as Joint Consumers noted in opening comments, digital redlining can be quantified by using the income levels in geographic areas.[41] Lower average income levels in a locality may lead providers to decline to upgrade technology, even as the providers deploy advanced technology in other areas, demonstrating that they have the capability to deploy the advanced facilities.[42] It is likely that these carrier deployment decisions will have a disproportionately negative impact on communities of color.

Joint Consumers urge the Commission to clarify this term so there will be no misunderstanding on the part of broadband providers or the public. "Digital redlining" arises where a service provider fails to invest in certain geographic areas, resulting in inferior technology deployment, while other areas of the service provider's territory receive the deployment of superior technology, such as FTTH. The term "redlining" is associated with housing markets, where historical practices related to restricted access to credit or other

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[39] AT&T Comments, p. 11; Charter Comments, p. 31; Comcast Comments, p. 30; Consolidated Comments, p. 6.
[40] Frontier Comments, p. 8.
[41] Joint Consumers Comments, pp. 16-17.
[42] *Id*. See also, "AT&T's Digital Redlining: Leaving Communities Behind for Profit," Communications Workers of America and the National Digital Inclusion Alliance, October 2020:

> "The analysis of AT&T's network reveals that the company is prioritizing network upgrades to wealthier areas, and leaving lower income communities with outdated technologies. Across the country, the median income for households with fiber available is 34 percent higher than in areas with DSL only -- $60,969 compared to $45,500. A similar disparity exists for households where AT&T does not meet the FCC speed threshold." (p. 4.)

economic impediments resulted in blighted communities which are still suffering today.[43] In a similar manner, digital redlining creates disadvantaged geographic areas by cutting off access to another key resource—high quality broadband. This results in islands of inferior economic opportunity and development.

AT&T, a company that has left large swaths of its service territory dependent on DSL, and which now has announced its intention to grandfather its DSL customers, attempts to muddy the water with regard to the issue of digital redlining. AT&T claims that there are multiple factors that might be associated with redlining: "Is the issue availability? Adoption? Affordability?"[44] This is nonsense—the key issue with digital redlining is availability. Frontier, another ILEC which has left large portions of its service area served by antiquated DSL facilities, indicates that it is not aware of such a practice "amongst Commission-regulated entities."[45] Frontier and AT&T have made business decisions to leave portions of their service areas unserved with the fiber technology that they deploy elsewhere—resulting in an outcome entirely consistent with digital redlining.[46]

Cable providers assert that they do not engage in redlining because they are required to serve all households within their franchise areas.[47] These service providers fail to mention that they do not serve many areas of the state, and they have made the business decision to stay out of

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[43] See, for example, Nardone, A., Chiang, J., and Corburn, J. "Historic Redlining and Urban Health Today in U.S. Cities, *Environmental Justice*, Vol 13, No. 4, August 2020.
[44] AT&T Comments, p. 11.
[45] Frontier Comments, p. 8.
[46] Greenlining Comments at p. 6; EFF Comments at pp. 19-20. See also, "AT&T's Digital Divide in California," Haas Institute Policy Brief, April 2017. https://belonging.berkeley.edu/atts-digital-divide-california . See also, AT&T's Digital Redlining: Leaving Communities Behind for Profit," Communications Workers of America and the National Digital Inclusion Alliance, October 2020. https://www.digitalinclusion.org/wp-content/uploads/dlm_uploads/2020/10/ATTs-Digital-Redlining-Leaving-Communities-Behind-for-Profit.pdf
[47] CCTA Comments, p. 15; Charter Comments, p. 31; Comcast Comments, p. 30; Cox Comments, pp. 12-13.

some California markets entirely, especially in rural areas. Here too we see practices consistent with digital redlining.

A. The Commission has Authority to Ensure Nondiscriminatory Practices

The Electronic Frontier Foundation ("EFF") urges the Commission to recognize the statutory mandate and authority it has, as the state's franchise authority, to ensure that carriers design, deploy and upgrade their networks in a nondiscriminatory manner.[48] Joint Consumers agree with EFF on this matter. To develop and refine policies regarding digital redlining, the Commission must look at more than pricing and marketing and begin with a review of the carriers' network deployment practices throughout California, including in rural areas, low income communities, and communities of color. As discussed in comments by the wireline providers, the Commission has jurisdictional authority over the facilities that providers deploy to offer a wide variety of communications services.[49] Joint Consumers urge the Commission to use its authority to satisfy its mandate to ensure nondiscriminatory practices and prevent the economic and social harms caused by digital redlining.

The OIR reaffirms the Commission's "comprehensive" Commission jurisdiction over the "deployment of high quality advanced communications services" and with regard to the state's broadband policy goals, citing to significant statutory authority and other state mandates.[50] And, while Joint Consumers agree that there are differences between the Commission's traditional set of regulations over public utilities[51] and its current statutory and public policy mandate to

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[48] EFF Comments at pp. 18-19.
[49] Frontier Comments at p. 3 ("The Commission's public utility authority extends to the infrastructure over which "telephone service" is delivered", citing Pub. Util. Code Section 233); Small LECs Comments at pp. 3, 6, 8 (recognizing "telephone facilities" owned by the Small LECs as multi-use facilities that can carry different types of traffic.).
[50] OIR at pp. 1-5.
[51] See, Charter comments at p. 24; Frontier Comments at p. 3; Small LECs Comments at p. 3.

support strong broadband policies, its authority to address market failures and discriminatory and inequitable treatment regarding broadband services is no less comprehensive and effective. For example, EFF urges the Commission to also use its authority pursuant to the state's cable and video franchising framework to support policies that address redlining and discriminatory practices.[52] Joint Consumers agree with EFF that the Digital Infrastructure and Video Competition Act (DIVCA) (Public Utilities Code § 5800 et seq.) directs the Commission, as the state's franchise administrator, to implement its statutory mandate in such a manner that will, "Promote the widespread access to the most technologically advanced cable and video services to all California communities in a nondiscriminatory manner regardless of socioeconomic status."[53]

DIVCA further specifies that, "A cable operator or video service provider that has been granted a state franchise under this division may not discriminate against or deny access to service to any group of potential residential subscribers because of the income of the residents in the local area in which the group resides."[54] The statute requires metrics and benchmarks for nondiscriminatory facility deployment, applied broadly to all franchise holders.[55] These specific provisions, and the data collection requirements throughout the statute designed to support this provision, give the Commission a framework to proceed with many of the public policies to be considered in this OIR and that Joint Consumers believe are necessary to address the digital divide.[56] And, perhaps most importantly, this statute clearly signals the intent of the Legislature

[52] EFF Comments at pp. 19-22.
[53] Pub. Util. Code Section 5810(a)(2)(B)
[54] Pub. Util. Code Section 5890(a)
[55] Pub. Util. Code Section 5890(b)-(e)
[56] See, D.07-10-013 at p. 13-18 (Summarizing statutory requirements and adopting build out requirements for smaller providers to implement Section 5890); General Order 169, Section VIII.

to support the Commission's role, including as the state's franchise authority, in broadband deployment and access policies.

While Joint Consumers do not share EFF's singular focus on fiber, as discussed below, we believe that EFF's point is well taken that the Commission derives additional authority through DIVCA, and that, "The absence of strong enforcement of the state's nondiscrimination policy carries serious ramifications for low income residents in major cities, as income status often can serve as a proxy for race."[57]

B. The Commission must seek detailed data from broadband ISPs

Joint Consumers believe that the Commission should seek detailed data regarding service availability, along with income and other demographic data, to fully evaluate the existence of digital redlining.[58] As we noted in opening comments:

> The Commission should seek detailed data from all broadband service providers regarding their deployment of broadband services within their service areas. This data should include information on the specific technology platform deployed (e.g., DSL, DOCSIS, FTTH), upload and download capabilities of the infrastructure, service installation times, service uptimes, and service prices and subscription rates. This data should be analyzed to determine whether portions of communities are excluded, for example, low-income communities and communities of color.[59]

Issues of adoption and affordability, while critical to remedying the digital divide, extend beyond the areas where digital redlining may exist. Solutions specific to problems associated with digital redlining should be created in addition to solutions for problems of adoption and affordability that are more generally applicable.

[57] EFF Comments at p. 21.
[58] Joint Consumers Comments, p. 17.
[59] *Id.*, p. 18.

VI. RESPONSE TO COMMENTS ON FIBER TO THE HOME

In opening comments, Joint Consumers supported the utilization of existing fiber facilities, including dark fiber, to expand the availability of broadband services.[60] Existing fiber networks, such as those controlled by electric Investor Owned Utilities (IOUs) can potentially provide a critical link in supplying middle-mile and backhaul facilities. As Joint Consumers noted in opening, however, fiber provision by IOUs has raised complex issues regarding cost recovery in the past.[61] Because of this, Joint Consumers have proposed a measured approach to IOU fiber deployment issues, including (1) Data collection from the IOUs regarding the availability of fiber facilities, and (2) the development of a framework for the leasing of dark fiber that fairly compensates electric ratepayers and the IOU.[62]

While recognizing the promise of FTTH, Joint Consumers do not see a convincing case at this time for the widespread replacement of *all* existing metallic facilities operated by broadband ISPs with fiber. The Electronic Frontier Foundation (EFF) offers enthusiastic advocacy for FTTH.[63] However, Joint Consumers are concerned that EFF's approach overlooks the impact on the business case for fiber where communities are already served by DOCSIS, and/or telephone company fiber. EFF also downplays the cost of a widespread FTTH overbuild.[64] Limited funds may be better utilized for other purposes than to deploy FTTH in areas that already have high quality broadband service. EFF concedes that because "that new fiber networks will not enjoy monopoly status like their cable and telephone predecessors,

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[60] *Id.*, pp. 5, 8, 21.
[61] *Id.*, p. 6.
[62] Joint Consumers Comments, p. 7.
[63] Electronic Frontier Foundation Comments, *passim.*
[64] The Fiber Broadband Association study cited by EFF to support their argument estimates that an incremental spend of $70 billion will be required to pass 90% of U.S. households by 2029. https://www.fiberbroadband.org/blog/new-study-finds-all-fiber-deployments-to-90-of-households-achievable-in-next-decade

promoting multiple different types of approaches suited for various communities will be necessary."[65] Joint Consumers agree—a fiber-only one-size-fits all is not the best approach for California.

Certainly, the service areas of telephone companies that are DSL dependent and unserved by cable broadband are the strongest candidates for FTTH deployment. Additionally, Joint Consumers believe that in situations where existing infrastructure has been destroyed, the Commission should encourage the deployment of FTTH.[66] Joint Consumers also urge the Commission to specify that where FTTH is deployed, either as new construction or to replace facilities that have been destroyed, 72 hours of backup power should be provided with the service.[67] Joint Consumers are pleased to see that Comcast acknowledges that provisioning wireline services with 72 hours of backup power is feasible.[68]

Some commentors respond as if the OIR advocates for the removal of all existing broadband facilities and their replacement with fiber.[69] Joint Consumers do not read the OIR's discussion in that light. Likewise, Joint Consumers do not believe that technology neutrality, another point raised by some broadband ISPs,[70] is violated by the promotion of fiber to replace damaged facilities, especially in telephone company service areas where replacement of legacy copper facilities following a disaster makes little sense. In light of the Executive Order's directive regarding desired broadband speeds, legacy DSL services are not a reasonable alternative. In contrast, fiber provides a "future proof" technology alternative and thus ensures

[65] EFF Comments, fifth unnumbered page.
[66] Joint Consumers Comments, p. 11.
[67] Joint Consumers Comments, p. 11.
[68] Comcast Comments, p. 35.
[69] Comcast Comments, p. 14; CCTA Comments, p. 8; Cox Comments, p. 9.
[70] CCTA Comments, p. 8; Comcast Comments, p. 3; Cox Comments, pp. 9-10.

that the Commission will not need to revisit infrastructure deployment once fiber is deployed. That certainly is not the case for some of the technologies advocated by some broadband ISPs as providing viable alternatives, such as fixed wireless or satellite services,[71] which have spotty coverage, especially in mountainous and forested areas, and may not be capable of meeting speed objectives.

Joint Consumers appreciate the perspective of cable operators on FTTH as these companies have network infrastructure with the capability of delivering speeds well in excess of 100 Mbps on a system-wide basis. The path dependency associated with their fixed investments in coaxial cable, along with the very high data speeds that can be delivered over coaxial cable in the type of modern hybrid fiber-coaxial (HFC) network that is utilized by major cable providers[72] does not readily support the argument that a fiber replacement strategy is necessary. However, Joint Consumers would expect that following a disaster these companies would deploy at least as much fiber as was deployed prior to the disaster and might consider deploying FTTH following the destruction of outside plant so as to improve the performance of their network and avoid the need to replace coaxial cable at some point in the future.

In response to the OIR's question on service restoration, AT&T offers a set of criteria that it proposes to use in considering how to rebuild following a disaster. Joint Consumers are concerned regarding a key element of AT&T's response to this question, namely, AT&T's statement that AT&T "determines the best options to address a given disaster, it endeavors to meet customers' needs and ensure they receive service *that is at least as good*, if not better, than

[71] CCTA Comments, pp. 8-9; Charter Comments, p. 10, Comcast Comments, p. 3; Cox Comments, pp. 7-8.
[72] Comcast Comments, p. 5; Charter Comments, p. 28; Cox Comments, p. 8.

they experienced before the disaster."[73] This approach begs the very important question of whether the level of broadband service prior to the disaster met the standards put forth in the Governor's Executive Order. Based on AT&T's widespread deployment of DSL, and its failure to adequately maintain its copper network[74], the answer to that question is critical. Joint Consumers believe that the Commission should ensure that any situation in which disasters force reconstruction of facilities, is used as an opportunity to improve the network with more advanced technology in areas that were previously served by DSL.[75] Carriers like AT&T, which has now grandfathered DSL services, should not be allowed to use disaster recovery as a mechanism to withdraw wireline services from the affected areas, or replace damaged facilities with inferior DSL service.

In conclusion on this matter, Joint Consumers believe that the Commission should favor the deployment of fiber optic cable in the support of broadband recovery in telephone company service territories following natural or man-made disasters. The Commission should not, as suggested by some commentors, support an approach to post-disaster reconstruction that relies on fixed wireless, mobile wireless, existing satellite, and yet-to-be deployed low-earth orbit satellites.[76]

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[73] AT&T Comments, p. 7, emphasis added.
[74] See the examination of AT&T's network undertaken in Docket R.11-12-001.
[75] Joint Consumers Comments, p. 11.
[76] Comcast Comments, p. 3; Charter Comments, p. 2; CCTA Comments, pp. 8-9; Cox Comments, pp. 7-8.

VII. THE COMMISSION SHOULD CONSIDER MUNICIPAL AND OTHER PUBLIC BROADBAND PROJECTS TO BE AN IMPORTANT PART OF THE STRATEGY TO IMPROVE AFFORDABLE BROADBAND DEPLOYMENT

In opening comments, Joint Consumers encouraged the Commission to keep the municipal broadband option open for California communities that may decide to pursue that alternative.[77] This should also apply to broadband provided by other public agencies, such as community services districts and counties. Not surprisingly, broadband ISPs do not welcome the potential for competition from municipal broadband projects. AT&T, for example, indicates its opposition to municipal broadband and states that the private sector has been "extremely responsive to consumer demand" for broadband.[78] Joint Consumers find some irony in this statement, given that, as previously noted, AT&T just announced its plans to grandfather wireline DSL-based broadband, with no apparent plans to replace those facilities with the state-of-the-art broadband wireline that consumers have indicated a strong desire to purchase.[79] Others from the broadband industry also oppose public support for municipal and public broadband.[80] However, CCTA and Charter concede that municipalities are allowed to participate in the CASF program.[81] Thus, the stated objections from those carriers have a hollow ring. Joint Consumers believe that the Commission should explore opportunities to support municipal broadband projects, especially those in areas that are unserved by high-quality broadband services.[82]

VIII. IT IS IMPORTANT THAT THE COMMISSION ADDRESS UPLOAD SPEEDS

[77] Joint Consumers Comments, pp. 22-23.
[78] AT&T Comments, p. 14.
[79] Joint Consumers Comments, p. 18; Charter Comments, p. 12; Comcast Comments, p. 7.
[80] Comcast Comments, pp. 37-38; Consolidated Comments, pp. 7-8.
[81] Charter Comments, p. 33; CCTA Comments, p. 19.
[82] EFF Comments, p. 15-16 (CPUC can work with municipalities to encourage network development and public reporting of facility availability.)

In opening comments, Joint Consumers noted that upload speeds are important for California consumers and in opening comments encouraged the Commission to consider both download and upload speeds as it addresses broadband speed issues.[83] This position is effectively supported by Comcast, which describes the cable industry's experience (as well as its own experience) with broadband usage, showing significant increases in upstream usage during the COVID-19 crisis:

> Since March 1, 2020, cable operators have experienced 14.2 percent overall average downstream peak growth as of the week of September 26, 2020, and *overall average upstream peak growth is up 36.9 percent.* At its highest peak since March 1, 2020, downstream traffic was up by 20.1 percent, while upstream traffic growth is currently at its highest peak of 36.9 percent. In California, Comcast has experienced average downstream peak growth of 11.6 percent and *41.9 percent average upstream peak growth* as of the week of September 26, 2020.[84]

Those significant jumps in upstream usage reflect increased consumer demand for upstream bandwidth as the COVID-19 crisis has generated rapid growth in upstream-dependent applications such as video conferencing. Clearly, access to broadband services with high-quality upload capabilities is important to California consumers.

Even so, Comcast otherwise downplays the importance of upload speeds, stating that *symmetrical* upload and download speeds are unnecessary,[85] and stating that 5 Mbps upstream speeds "can unquestionably support a household's entire broadband needs."[86] The Commission should ignore the red herring offered by Comcast. Consumers need high-quality upload speeds, *even if they are not symmetrical with download speeds.* As Joint Consumers noted in opening comments, cable operators crimp the availability of upstream bandwidth as a price

[83] Joint Consumers Comments, p. 31.
[84] Comcast Comments, pp. 12-13, emphasis added.
[85] Comcast Comments, p. 14.
[86] *Id.*, p. 8.

discrimination tactic, even as they have the capability to deliver higher upstream speeds.[87] Consumers should have the opportunity to have affordable access to high quality broadband speeds—both downstream and upstream.

Elsewhere in its comments Comcast reports that the cable industry believes that upstream bandwidth is important—"latest DOCSIS 4.0 technology will allow cable operators to ultimately achieve 10 Gbps speeds downstream – *and 6 Gbps upstream*…"[88] Thus, the cable industry's next generation upstream speed is *1,200 times* faster than the 5 Mbps speed that Comcast says is sufficient.[89] The cable industry, including Comcast, is certainly anticipating a strong customer appetite for much higher upload speeds. Given that DOCIS is the cable industry standard, the entire industry is moving in the direction of supplying much higher upload speeds. This Commission must address upload speeds as it addresses broadband availability and affordability issues in California.[90]

IX. RESPONSE TO PUBLIC ADVOCATES PROPOSED PILOT PROJECTS

The Public Advocates Office (Public Advocates) points out that funds in the CTF Administrative Committee's Digital Divide Account must be used for digital divide pilot projects.[91] Joint Consumers support Public Advocates' proposal to partner with the California Department of Education (CDE) to select a project based on immediate need.[92] Joint Consumers also support Public Advocates' request that that the Commission consider ways to augment the

[87] Joint Consumers Comments, pp. 31-32.
[88] Comcast Comments, p. 6.
[89] Other current upload speeds offered by Comcast, indicating that consumers want faster upload speeds are identified by Comcasts at: https://www.xfinity.com/networkmanagement
[90] Joint Consumers Comments, pp. 30-32.
[91] Public Advocates Comments, p. 20.
[92] *Id.*

$1 million Digital Divide Account. Joint Consumers agree with Public Advocates that $1 million will not substantially impact schools and students.[93]

Public Advocates also calls for a pilot project to support broadband deployment in Tribal communities.[94] Joint Consumers note that Public Advocates has previously proposed a broadband pilot program in R.11-11-007, which would require a 6/1 Mbps download/upload standard.[95] In this proceeding, however, Public Advocates now proposes to update that proposal from 6/1 Mbps standard to 100 Mbps standard in light of the Executive Order's 100 Mbps download speed objective.[96] Joint Consumers support this proposal in principal but would urge the Commission to consider targeting the unserved households first before the pilot begins to fund underserved households at 100 Mbps.

Public Advocates states that there is a population of 18,786 individuals within Tribal households that do not have broadband access at speeds of 100 Mbps. Moreover, Public Advocates identifies that there are households with service availability that ranges from 6/1 Mbps service up to 100 Mbps service.[97] These households do not have service at the standard directed by the Executive Order. At the same time, they do not currently qualify for CASF support because they are considered "served" at the current qualifying levels. Joint Consumers agree that the CPUC must address how to support these households caught in the middle of both

[93] Joint Consumers Comments, p. 20.
[94] Public Advocates Comments, pp. 21-23.
[95] R.11-11-007, Opening Comments of the Public Advocates Office on the Assigned Commissioner's Fifth Amended Scoping Memo and Ruling by Jayne Parker and Patrick E. Hoglund on February 28, 2020, p. 1.
[96] Public Advocates Comments, p. 21.
[97] *Id.,* p. 22.

standards.[98] Joint Consumers support this approach as a pilot project because the pilot identifies a relatively small population that will be targeted specifically for increased broadband speeds.

Joint Consumers suggest that the Commission could move forward with the CASF-funded investment for this Tribal broadband pilot in two phases. The first phase would quantify the impact of the anticipated infrastructure building costs on CASF. The second phase would grant the available funding for infrastructure buildout, assuming that the Commission finds no adverse impact on CASF. Joint Consumers are concerned about Public Advocate's recommendation to fund the pilot program's operational costs with CHCF-B subsidy[99] because it may limit participation to telephone companies that are COLRs, absent further Legislative action. For this reason, Joint Consumers support Public Advocates' pilot project proposal on a limited basis and caution against expansion until further consideration is given for eligible participants and broader funding sources for CASF, CHCF-B and other funding strategies.

X. THE COMMISSION SHOULD CONFIRM THAT OPEN ACCESS IS WITHIN THE SCOPE OF THIS DOCKET

Broadband ISPs offer various perspectives on the "open access" issue that was raised in the OIR. For example, Charter interprets the issue in light of improved access to poles and conduit.[100] AT&T offers a similar interpretation,[101] as do Small LECs.[102] Frontier, on the other hand, apparently believes that open access means that the Commission would "force companies to give away access to their networks for free."[103] Hopefully, after reviewing the opening

[98] *Id.*, pp. 21-22.
[99] *Id.*, p. 22.
[100] Charter comments, p. 25.
[101] AT&T Comments, p. 4.
[102] Small LEC Comments, p. 11.
[103] Frontier Comments, pp. 5-6.

comments, Frontier now has a better understanding of the open access issue—open access is not about making wholesale broadband services available free of charge.

Other parties, like Joint Consumers, acknowledge that the Commission has raised the open access issue in the CASF proceeding,[104] where it proposed a working definition of the term "making capacity available on non-discriminatory, reasonable, and equal terms."[105] CCTA and Cox recommend that the open access issue be dropped from this proceeding and be limited to the CASF proceeding.[106] Joint Consumers do not agree with Cox and CCTA's recommendation. While the Commission should be mindful regarding parallel tracks on the open access issue, Joint Consumers believe that it continues to be a valid consideration in this proceeding in the context of issues raised in the Executive Order. Contrary to CCTA's assertion that the Executive Order does not mention open access,[107] the Executive Order specifically states that the Commission should "leverage utility infrastructure to increase access *to existing fiber* and cost-effectively deploy new fiber."[108] Joint Consumers believe that open access consideration falls within the bounds of increasing access to existing fiber.

Several parties argue that the Commission has no authority to mandate infrastructure sharing and otherwise point to the alleged pitfalls of open access requirements.[109] Joint Consumers note that the Commission can promote open access for projects that it funds, such as CASF middle-mile facilities,[110] and also work to establish commitments for open access, for

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[104] Joint Consumers Comments, pp. 8-9; CCTA Comments, p. 5; Cox Comments, p. 5.
[105] August 27, 2020 OIR in R.20-08-021, at p. 7.
[106] CCTA Comments, p. 5.
[107] *Id.*, p. 5.
[108] Executive Order, "Deployment," item #8, emphasis added.
[109] AT&T Comments, p. 5; Charter Comments, pp. 25-26; Comcast Comments, pp. 18-19; Consolidated Comments, pp. 4-5; Cox Comments, p. 6; CTIA Comments, p. 7; Frontier Comments, pp. 5-6; Small LECs Comments, pp. 11-12.
[110] Public Advocates Comments, p. 7.

example, from IOUs or others that might supply fiber for middle-mile facilities. Joint Consumers encourage the Commission to follow the directive in the Executive Order and explore ways to leverage utility infrastructure to increase access to existing fiber and cost-effectively deploy new fiber.[111]

XI. RESPONSE TO ISSUES RAISED BY THE SMALL LECS

The Small LECs introduce rate case reform issues in their opening comments.[112] Joint Consumers do not believe that this is the appropriate proceeding to address rate case reform. The Small LECs raised this issue extensively in the CHCF-A proceeding and the Commission can address that issue there if it chooses. Small LECs also state that because they have recently been scrutinized in the CHCF-A proceeding that they should not be named as respondents in this proceeding.[113] Joint Consumers believe that the "interested party" status that the Small LECs seek is not appropriate. Given that the Small LECs state that even if they were given "interested party" status that "the Small LECs will likely participate in many aspects of this proceeding,"[114] it appears that any incremental burden placed on the Small LECs will be small, and the Small LECs should remain respondents.

XII. THIS DOCKET AND R.20-08-021 (CASF) ARE COMPLEMENTARY

Public Advocates, CETF, and CCTA all raise, but have differing suggestions, on how the Commission should handle any issues of overlap between this Broadband OIR and the CASF Rulemaking, R.20-08-021. For example, Public Advocates and CETF suggest making changes

[111] Joint Consumer Comments, pp. 9-10.
[112] Small LEC Comments, pp. 3 & 6.
[113] *Id.*, p. 5.
[114] Small LEC Comments, p. 5.

in this OIR that would affect CASF.[115] On the other hand, CCTA recommends eliminating some issues from this proceeding and addressing them solely in the CASF proceeding.[116] Joint Consumers acknowledge there is a potential for overlapping issues between this OIR and other proceedings, such as CASF, since this proceeding is anticipating taking a holistic approach to "accelerate the deployment of and access to quality, affordable internet for all Californians."[117] The potential for overlapping issues between this proceeding and the CASF proceeding was recently discussed in the October 1, 2020 CASF Pre-Hearing Conference.[118] The parties to the CASF proceeding generally agreed that the Broadband OIR and the CASF proceeding should not be consolidated based on the risk that CASF-specific issues might be buried in the larger scope of the Broadband OIR. [119] However, parties also generally agreed that the Commission could hold joint workshops and consolidate the records of the proceedings for specific issues.[120] Joint Consumers agree that the Broadband OIR and the CASF proceeding should inform each other, and that any overlapping issues can be addressed through joint workshops, briefings, and consolidation of the records on those specific issues.

Some of the issues identified in the CASF proceeding has been grappling with may benefit from a more holistic approach as made possible in the Broadband OIR. For example, Public Advocates suggest that the Broadband OIR can consider an open access requirement,

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[115] Public Advocates Opening Comments on the OIR at p. 2 (discussing open access and prioritization for CASF). See generally, CETF Opening Comments on the OIR.
[116] CCTA at p. 5, 13-14, 16, 18, 20 (recommending removing open access, broadband adoption, supporting Tribal and unconnected area with nearby infrastructure, and opportunities for government entities to deploy broadband infrastructure in the CASF proceeding).
[117] OIR at p. 1.
[118] The Scoping Memo for the CASF proceeding was issued a day before these comments are due. This proceeding could coordinate joint briefings on overlapping issues, or otherwise make available the record from the CASF proceeding in this proceeding to inform the record of this proceeding.
[119] See generally, R.20-08-021, October 1, 2020 Pre-hearing Conference, TR 24:18-42:6.
[120] See e.g., R.20-08-021, October 1, 2020 Pre-hearing Conference, TR 31:8-14 (Small LECs and Frontier), 33:3-11 (TURN), 34:5-11 (AT&T), 37:28-38:12 (Public Advocates), 41:6-14 (Greenlining).

including for CASF middle-mile deployments.[121] While Public Advocates suggests a definition of "open access" for the purposes of their comments, the CASF proceeding has yet to define "open access" and is currently utilizing a working definition.[122] Open access is an issue that extends beyond broadband supported by CASF, and it is appropriate to consider it here, in a more comprehensive broadband docket. Similarly other issues, including but not limited to, providing assistance to Tribes, and ensuring communities that are adjacent to or near infrastructure are able to connect, may benefit from the more comprehensive scope of the Broadband OIR proceeding. Therefore, Joint Consumers recommend the Commission reject CCTA's suggestions to remove issues from this proceeding, since this proceeding has a broader scope than the CASF proceeding, and joint development of the records for both proceeding will further this proceeding's goal "to accelerate deployment and access to quality, affordable internet for all Californians."[123]

Joint Consumers support CCTA's suggestion that "the CPUC take steps to quickly update the Broadband Availability Map to reflect all unserved areas."[124] The accuracy and the up-to-date status of the Broadband Availability Map is another example of an issue that has been identified in the CASF proceeding that could benefit from the broader consideration of broadband issues in this proceeding.[125] While potential applicants depend on the accuracy of the Broadband Availability Map, the Commission does not currently require all potential CASF application challengers to submit their deployment data as an input to the map.[126] Accurate

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[121] Public Advocates at p. 7.
[122] *Id.*, at fn. 22; CASF OIR (R.20-08-021) at p. 7.
[123] OIR at p. 1.
[124] CCTA at pp. 11-12.
[125] See e.g. CASF OIR (R.20-08-021) at p. 7.
[126] CASF OIR (R.20-08-021) at p. 7. See also, Small LECs Opening Comments on the OIR (R.20-08-021) at p. 5.

broadband deployment data is important to achieve the objective of the Governor's Executive Order in this Broadband OIR, while also being important to implement the CASF. The Commission needs all broadband providers to submit their deployment data to the Commission to inform the Broadband Availability Map and policies for both proceedings.

XIII. CONCLUSION

Joint Consumers applaud the efforts of the Commission to take a comprehensive, strategic approach to carrying out the objectives set forth in the Executive Order. The Commission is uniquely positioned to act on its own authority, and in collaboration with state and local agencies, to fulfill the Governor's mandate and address the need for ubiquitous, high quality affordable broadband for all Californians.

Respectfully submitted,

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