

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**



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Order Instituting Rulemaking Regarding  
Broadband Infrastructure Deployment and to  
Support Service Providers in the State of  
California.

Rulemaking 20-09-001

**COMMENTS OF THE  
CALIFORNIA CABLE AND TELECOMMUNICATIONS ASSOCIATION**

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The California Cable and Telecommunications Association (“CCTA”)<sup>1</sup> submits these comments to the California Public Utilities Commission (“Commission”) in response to the *Assigned Commissioner’s Ruling* dated August 6, 2021 (“Ruling”). These comments are timely filed pursuant to the Administrative Law Judge (“ALJ”) ruling by email dated August 20, 2021, which extended the deadlines for comments to September 3, 2021, and reply comments to September 21, 2021.<sup>2</sup>

**I. INTRODUCTION**

CCTA supports Governor Newsom’s \$6 billion broadband investment to connect all Californians statewide and is actively engaged with the multiple entities charged with ensuring

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<sup>1</sup> CCTA is a trade association consisting of cable providers that have collectively invested more than \$40 billion in California’s broadband infrastructure since 1996 with systems that pass approximately 96 percent of California’s homes.

<sup>2</sup> CCTA appreciates the ALJ granting an extension of time to file comments and notes significant challenges with analyzing the proposal set out in the Ruling, as there appears to be errors in the county and highway data in Attachment 1 to the Ruling. CCTA also appreciates that the link provided on August 20, 2021, to the ArcGIS map referenced in Attachment 1 includes the shapefile for state highway routes and wishes to note that it does not include a shapefile depicting the “unserved” areas contained in the layer titled “BB Deployment 100DN.” In addition, CCTA notes that it is difficult to respond precisely to Attachment 1 given that the map has changed three times – on August 6, August 19, and most recently on August 20.

that this historic initiative achieves the intended purpose – bringing broadband service to the unserved. For all entities with a role in implementing Senate Bill (“SB”) 156,<sup>3</sup> including the \$3.25 billion investment in a statewide middle-mile network (“Middle-Mile Network”), success in implementation should be measured by achieving the Governor’s and Legislature’s intent to ensure last-mile connectivity for California’s unserved households. As described by Senator Mike McGuire, the Legislature intends a “worst first” strategy that requires first allocating funding for both middle-mile and last-mile infrastructure in areas where no service or very slow service exists.<sup>4</sup> SB 156 reflects this strategy by defining an “unserved” area as one with no provider offering service at speeds of at least 25 Mbps downstream and 3 Mbps upstream (“25/3 unserved standard”). Accordingly, use of the \$3.25 billion for the Middle-Mile Network to fund infrastructure in areas that already have access to service above 25/3 would undermine the Governor’s and Legislature’s intent, waste precious public funds, and ignore more remote and rural areas that today remain truly unserved.

CCTA respectfully submits that the Ruling seeking comments on which state highway routes should be considered or removed from consideration skips the necessary first step, which is to identify those communities that are unserved. Also, the proposal set forth in Attachment 1 to the Ruling appears to rely on faulty data. Basing recommendations on erroneous data is contrary to the public interest and legislative intent. Practically speaking, it would lead to wasteful expenditures, and — most importantly — not close the digital divide.

It is also essential for the Commission to align this solicitation of comments with the limited purpose specified in SB 156 of providing a staff report to the California Department of

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<sup>3</sup> SB 156 (Ch. 112, Stats of 2021), which took effect on July 20, 2021 as an urgency measure.

<sup>4</sup> Statement of Senator McGuire, recording of August 18 meeting of Middle-Mile Advisory Committee, at 1:02, available at [Middle-Mile Past Meeting Resources | CDT \(ca.gov\)](#).

Technology (“CDT” or “Department”) identifying potential locations for the Middle-Mile Network. With these overarching legislative directives and purposes in mind, CCTA responds below to the specific questions posed in the Ruling.

**II. SB 156 REQUIRES THE COMMISSION TO IDENTIFY POTENTIAL LOCATIONS FOR THE MIDDLE-MILE NETWORK THAT WILL ENABLE LAST-MILE CONNECTION OF UNSERVED HOUSEHOLDS IN AREAS LACKING MIDDLE-MILE INFRASTRUCTURE.**

The Legislature established the overall governance structure for the Middle-Mile Network with a specific, limited role for the Commission. Specifically, SB 156 requires the newly created Office of Broadband and Digital Literacy (“Office”) within the Department to oversee the development, construction, maintenance, and operation of the Middle-Mile Network<sup>5</sup> and grants the Office broad comprehensive powers over all aspects of the network.<sup>6</sup> The Office is required to retain a third-party administrator (“TPA”) “to manage the development, acquisition, construction, maintenance, and operation” of the Middle-Mile Network.<sup>7</sup> SB 156 assigns the Commission the limited duty to provide the Office a staff report identifying potential locations for the Middle-Mile Network,<sup>8</sup> with a specific directive to “prioritize locations that enable last-mile connections to residences unserved by 25 mbps downstream and 3 mbps upstream.”<sup>9</sup> In addition to receiving this report from the Commission,<sup>10</sup> the Office is required to

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<sup>5</sup> Government Code Section 11549.52(a). All further section references are to the Government Code unless otherwise indicated.

<sup>6</sup> Section 11549.53(a).

<sup>7</sup> Section 11549.53(b)(1).

<sup>8</sup> Section 11549.54.

<sup>9</sup> Section 11549.54(d). Subdivision (a) of Section 11549.54 requires the Commission to collaborate with the TPA when fulfilling this duty to provide the Office a staff report identifying unserved locations for potential Middle-Mile Network deployment. CCTA understands that the Office has finalized an agreement to retain CENIC as the TPA and looks forward to stakeholder engagement with CENIC as part of the Commission’s process in developing the staff report before it is provided to the Office.

<sup>10</sup> Section 11549.54(h).

“consider technical advice” from service providers and other stakeholders and may convene a working group for additional input.<sup>11</sup>

Regarding the Commission’s role to provide the Office a staff report, Government Code Section 11549.54 (“Section 11549.54”) includes specific directives for identifying Middle-Mile Network locations for consideration by the Office. The statute effectively establishes four steps the Commission must take to prioritize the universe of potential Middle-Mile Network locations consistent with the “worst first” strategy to ensure that the \$3.25 billion is targeted to bring broadband first to the hardest to reach unserved California households.

First, the Commission is required to identify potential Middle-Mile Network locations “that will enable last-mile service connections.”<sup>12</sup> This statutory guidance is helpful in narrowing down where the Commission should be focusing its efforts – which in turn ensures consistency with the legislative purpose to ensure that the \$3.25 billion investment is targeted where middle-mile networks are actually needed and not used to build a network to nowhere.

Second, as discussed above, Section 11549.54 requires the Commission to “prioritize locations that enable last-mile connections to residences unserved by 25 mbps downstream and 3 mbps upstream.”<sup>13</sup> This is the same 25/3 unserved standard that SB 156 adopts for broadband infrastructure grants from the California Advance Services Fund (“CASF”) program.<sup>14</sup>

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<sup>11</sup> Section 11549.54(i)(1) - (2).

<sup>12</sup> Section 11549.54(b): “The commission shall identify statewide open-access middle-mile broadband network **locations that will enable last-mile service connections** and are in communities where there is **no known middle-mile infrastructure that is open access, with sufficient capacity, and at affordable rates.**” (emphasis added). CCTA recognizes that subdivision (b) also requires an analysis of whether any existing middle-mile infrastructure exists that is “open access,” but that is an analysis to identify a subset of the locations that will enable last-mile connectivity of unserved households.

<sup>13</sup> Section 11549.54(d). This subdivision, in addition to requiring the Commission to identify locations with unserved households, also allows, but does not require, identification of locations with specified anchor institutions “that lack sufficient high-bandwidth connections.”

<sup>14</sup> Public Utilities Code Section 281(b)(1)(B)(ii).

Moreover, the U.S. Treasury regulations implementing the American Rescue Plan Act (“ARPA”), which is the source of funding for the \$3.25 billion network,<sup>15</sup> requires that broadband projects be “designed to provide service to unserved or underserved households and businesses,”<sup>16</sup> defined as lacking 25/3 service.<sup>17</sup> It is unclear why the Ruling appears to focus on a “100 Mbps” standard as opposed to the 25/3 unserved standard designated in statute.

Third, after first defining and prioritizing this universe of unserved locations, the Commission can further prioritize the unserved last-mile locations in areas that also lack *any* existing middle-mile facilities. This is reflected in the directive that the Commission identify locations in “areas with no known middle-mile network access” and “regions underserved by middle-mile networks.”<sup>18</sup> In addition, Section 11549.54 requires the Commission to solicit comments on, among other topics, “availability . . . of commercial sources of supply of middle-mile broadband network services.”<sup>19</sup> Together, these provisions make clear a legislative intent to invest the \$3.25 billion in a Middle-Mile Network in areas where no middle-mile facilities already exist.

Fourth, Section 11549.54 provides that, once the list of potential locations is narrowed

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<sup>15</sup> Budget Act of 2021, § Section 28 of AB 164, Ch. 84, Stats. 2021.

<sup>16</sup> See 86 Fed. Reg. 26786 (May 17, 2021), specifically 31 C.F.R. § 35.6(e)(2).

<sup>17</sup> 31 C.F.R. § 35.3 (“Unserved and underserved households or businesses means one or more households or businesses that are not currently served by a wireline connection that reliably delivers at least 25 Mbps download speed and 3 Mbps of upload speed.”).

<sup>18</sup> Section 11549.54(c).

<sup>19</sup> Section 11549.54(f)(1)(A). This directive requires consideration of *all* existing middle-mile infrastructure and facilities, regardless of whether any of it could be characterized as “open access.” In fact, it is unclear how the Commission can determine under Section 11549.54(b) whether an area has “no known middle-mile infrastructure that is open access” given conflicting definitions of “open access.” Section 11549.50(e) defines “open access” as “equal non-discriminatory access to eligible entities on a technology and competitively neutral basis, regardless of whether the entity is privately or publicly owned.” The Ruling, however, states that “‘Open Access’ refers to ‘a network model that allows any entity to access and utilize the infrastructure at a fair market rate and in a non-discriminatory manner.’” Ruling at 4. These definitions are inconsistent in terms of eligible entities and rates and do not align with the “open access” requirement the Commission adopted in D.21-03-006.

based on steps one through three, the Commission should prioritize within this list the locations where segments of the Middle-Mile Network could be deployed in state highway rights-of-way.<sup>20</sup> Significantly, this prioritization of highway rights-of-way is not expressly required as part of the staff report for consideration by the Office,<sup>21</sup> and instead is more relevant to Section 11549.55, which refers to the California Department of Transportation constructing the Middle-Mile Network. In fact, the Commission is required to provide this list of potential highway project locations to the Department of Transportation, not the Office.<sup>22</sup> In any case, the prioritization of locations where deployment is possible along state highway rights-of-way also emphasizes the “worst first” strategy. The Legislature directs the Commission to seek “to achieve the greatest reductions in the amount of households unserved by broadband access meeting federal and state standards.”<sup>23</sup> In this regard, both California and federal agencies use the 25/3 unserved standard for awarding broadband infrastructure funds.<sup>24</sup>

CCTA respectfully urges the Commission to follow these legislative requirements, among others,<sup>25</sup> when providing a staff report to the Office. To the extent the Ruling states that it is opening a “public comment process to collect recommendations” for the locations for the Middle-Mile Network pursuant to SB 156,<sup>26</sup> it is critical that the recommended locations in the

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<sup>20</sup> Section 11549.54(e).

<sup>21</sup> Section 11549.54 (“The office shall plan and develop the statewide open-access middle-mile broadband network using the information provided pursuant to subdivisions (a) to (d), inclusive.”). Thus, the prioritization of highway routes is not essential for purposes of providing the Office a staff report recommending Middle-Mile Network locations.

<sup>22</sup> Section 11549.54(e)(2).

<sup>23</sup> Section 11549.54(e)(1).

<sup>24</sup> See [Implementing the Rural Digital Opportunity Fund \(RDOF\) Auction | Federal Communications Commission \(fcc.gov\)](https://www.fcc.gov/record/2019/08/01/Implementing-the-Rural-Digital-Opportunity-Fund-(RDOF)-Auction)

<sup>25</sup> For example, Section 11549.54(c) authorizes the Commission to further refine its list of potential Middle-Mile Network locations by considering other factors such as “areas that can be built expeditiously.”

<sup>26</sup> Ruling at 1.



staff report are consistent with express legislative directives.

### III. RESPONSES TO QUESTIONS POSED IN THE RULING

**1. Identifying Existing Middle Mile Infrastructure:** Attachment A provides a list of the state routes proposed for the statewide open access middle mile network, referred to as the “Anchor Build Fiber Highways.” These routes may also be viewed on an ArcGIS map, which can be found here: <https://www.arcgis.com/home/webmap/viewer.html?webmap=e17e4e1c88b04792ab0a2c50aa1a19a3&extent=-126.1445,34.5234,-113.5981,41.1113>

- What routes, if any, should be modified, removed from consideration, or revised?

Provide an explanation for these suggestions.

- Are there existing middle mile routes that are open access, with sufficient capacity, and at affordable rates on the county highway routes listed in Attachment A?
- In the context of these comments, what is sufficient capacity and affordable rates?
- For routes that are identified as being open access, with sufficient capacity, and at affordable rates, how should the Commission verify these claims (e.g., should Communications Division send a data request for service term sheets, rates, approximate dark fiber, lit fiber, and conduit capacity, etc.)? Are there any other criteria that should be used to verify these claims?

Question 1 and Attachment 1 to the Ruling identify California highways before first identifying unserved areas that lack existing middle-mile infrastructure. This approach effectively puts the cart before the horse and fails to comport with the requirements of Section 11549.54, as discussed in Section II. It therefore appears that the Ruling’s approach is at odds with the “worst first” strategy the Legislature adopted in SB 156 to ensure that the \$3.25 billion Middle-Mile Network results in last-mile connection of households that lack service. In fact, as discussed in Section II, the Commission’s prioritization of highway rights-of-way is not included in the information designated for the Office to use when planning and developing the Middle-Mile Network<sup>27</sup> and is not specified for inclusion in the staff report.

If the Commission nonetheless elects to refer to or rely on Attachment 1 to comply with Section 11549.54(e), Attachment 1 should be updated to correct the following errors:

- Kings County lists a total number of households as 44,561, which appears to be

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<sup>27</sup> Section 11549.54(h).

inconsistent with recent Census data.

- Shasta County lists the same number of total households and unserved households, and sets forth a figure of 100% unserved households while, in fact, the majority of households in Shasta County are served.
- The lists of highway routes include several that are not within the counties specified.<sup>28</sup>

Accordingly, CCTA respectfully requests that the Commission correct the errors in Attachment 1 and provide an opportunity for comment on a corrected proposal prior to the 90-day statutory deadline for soliciting and receiving comments that will inform the staff report to be provided to the Office.<sup>29</sup>

**2. Priority Areas: Federal funding must be encumbered and spent in a limited time period. Additionally, unserved and underserved areas of the state are in substantial need of broadband infrastructure investment.**

- **Is it reasonable to assume counties with a disproportionately high number of unserved households (e.g., 50% or more unserved at 100 Mbps download) are areas with insufficient middle-mile network access?**
- **What other indicators, if any, should the Commission use to identify priority statewide open-access middle-mile broadband network locations (i.e., built expeditiously, areas with no known middle-mile network access, regions underserved by middle-mile networks, regions without sufficient capacity to meet future middle-mile needs)?**

As discussed in Section II, the Legislature directed the Commission to identify locations to enable last-mile connections in unserved areas lacking last-mile 25/3 service and existing middle-mile facilities.<sup>30</sup> The data and processes the Commission uses to identify “unserved” areas for the CASF program is the starting point. In addition, it is important to exclude the following locations that *soon* will be served:

- Locations that will become served as a result of already awarded CASF grants.

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<sup>28</sup> Comments of Zayo Group filed early on August 27, 2021, also identified errors in highway designation in Attachment 1.

<sup>29</sup> Section 11549.54(f).

<sup>30</sup> Moreover, federal regulations that govern the expenditure of the ARPA funds allocated for the Middle-Mile Network require eligible projects be designed to connect households and businesses unserved using the 25/3 unserved standard.

- Locations that will become served as a result of awards from the Rural Digital Opportunity Fund or similar broadband public funding programs.
- Any existing enforceable regulatory obligation for a provider to deploy broadband in an unserved area.
- Locations that will become served as a result of known private infrastructure projects that are shovel-ready but face a final hurdle of obtaining permits. As discussed in comments submitted in previous phases of this proceeding,<sup>31</sup> providers have broadband deployment projects across the state that are ready to go but await action on permits and other approvals by various state and local agencies.
- Locations that are included in pending CASF infrastructure grant applications, including the nearly 40 applications submitted in May 2020 that await Commission action.

It makes no sense – and would promote waste of the \$3.25 billion in federal funds – for the Commission to identify these locations to be overbuilt by a new Middle-Mile Network, particularly those locations for which public funds already have been awarded. Moreover, these pending projects can be completed much more expeditiously than projects in unidentified locations that are still to be developed and funded under the new \$6 billion broadband plan.

### **3. Assessing the Affordability of Middle Mile Infrastructure**

#### **5. Interconnection**

#### **6. Network Route Capacity**

CCTA looks forward to reviewing the opening comments of other parties in response to Questions 3, 5, and 6 and reserves the right to respond in reply comments.

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<sup>31</sup> Comments of CCTA (October 12, 2020) at 5-7).

**4. Leasing Existing Infrastructure: Indefeasible Rights of Use (IRUs) are long term leases (generally 20 to 30 years) for unrestricted, legal capacity on a communications network for a specified period of time.[1] These contracts generally obligate the purchaser to pay a portion of the operating costs, and the costs of maintaining the infrastructure.**

- **If there is existing open access communications infrastructure with sufficient capacity to meet the state’s needs, should the state purchase IRUs from that network?**
- **Is there any value in the state purchasing an IRU from the network if capacity is already available?**
- **If the state relies on IRUs for the development of the statewide network, will the generational investment that this funding provides be diminished when the IRU leases end 20 to 30 years later? Will existing networks run out of spare capacity?**

CCTA views these questions as related to the responsibility of the Office to operate the Middle-Mile Network pursuant to Section 11549.57<sup>32</sup> and outside the scope of the Commission’s responsibility to solicit comments to inform the staff report identifying potential locations for this network. CCTA therefore has no comment at this time but reserves the right to respond to opening comments filed by other parties in response to Question 4.

#### **IV. CONCLUSION**

CCTA appreciates the opportunity to respond to the Ruling and looks forward to review of other parties’ comments, as well as to respond to an updated Commission proposal with correction of identified errors. CCTA urges the Commission to provide the Office a staff report that will advance the legislative intent of ensuring that California’s historic \$6 billion broadband

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<sup>32</sup> The only mention of IRUs in SB 156 appears in Section 11549.57:

(a) In the operation of the statewide open-access middle-mile broadband network, the office may establish reasonable user policies, perform reasonable network management practices, and create related standards and policies.

(b) The office shall ensure that there are a variety of services offered to internet service providers or other eligible entities on the statewide open-access middle-mile broadband network.

(c) **Where feasible, the office shall consider if the term of access to dark fiber shall be no less than a 20-year indefeasible right to use.**

(d) Where feasible, the office shall consider including excess conduit capacity in projects to ensure for potential growth of the statewide open-access middle-mile broadband network.

(e) This section does not prohibit the office from making a grant of dark fiber strands for purposes of enhancing the California Research and Education Network.

(emphasis added)

investment follows the “worst first” strategy codified in SB 156 to prioritize deployment that enables last-mile connectivity for areas of the state that have no service or very slow service.

Respectfully submitted,

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