

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

**REPLY COMMENTS OF THE PUBLIC ADVOCATES OFFICE  
ON ASSIGNED COMMISSIONER'S RULING ON LOCATIONS  
FOR A STATEWIDE OPEN ACCESS MIDDLE MILE NETWORK**

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## I. INTRODUCTION

Pursuant to the Assigned Commissioner's Ruling issued on August 6, 2021 (Middle Mile Ruling) and the extension of time granted pursuant to Administrative Law Judge Glegola's August 20, 2021 email ruling, the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) submits these reply comments in response to opening comments parties submitted on September 3, 2021.

In response to other parties' opening comments on the Middle Mile Ruling, Cal Advocates recommends that the California Public Utilities Commission (Commission):

- Prioritize marginalized and historically excluded communities for middle mile deployment;
- Disregard comments suggesting that incumbent local exchange carrier (ILEC) middle mile infrastructure is available at affordable rates and is open access;
- Disregard proposed requirements to only build middle mile in areas with existing last mile infrastructure or planned last mile projects;
- Continue to focus on seeking information regarding the location of the state middle mile network and disregard the Small Local Exchange Carriers'<sup>1</sup> (Small LECs) comments regarding the California Advanced Services Fund ("CASF") and the California High Cost Fund-A ("CHCF-A") programs, especially when both of these programs have funded middle mile broadband deployment; and,
- Disregard comments that characterize development of a statewide middle mile network as overbuilding.

## II. DISCUSSION

### A. **The Commission should prioritize marginalized and historically excluded communities for middle mile network deployment.**

Cal Advocates agrees with multiple parties regarding the need to prioritize areas for deployment which lack access to broadband,<sup>2</sup> and emphasizes that the Commission should

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<sup>1</sup> The Small LECs are: Calaveras Telephone Company (U 1004 C), Cal-Ore Telephone Co. (U 1006 C), Ducor Telephone Company (U 1007 C), Foresthill Telephone Co. (U 1009 C), Happy Valley Telephone Company (U 1010 C), Hornitos Telephone Company (U 1011 C), Kerman Telephone Co. (U 1012 C), Pinnacles Telephone Co. (U 1013 C), The Ponderosa Telephone Co. (U 1014 C), Sierra Telephone Company, Inc. (U 1016 C), The Siskiyou Telephone Company (U 1017 C), Volcano Telephone Company (U 1019 C), and Winterhaven Telephone Company (U 1021 C).

<sup>2</sup> Opening Comments of California State Association of Counties on the Assigned Commissioner's Ruling, p. 5, Comments of the Center for Accessible Technology on the Assigned Commissioner's Ruling on Phase III Issues ("CforAT Opening Comments"), p. 5, and Comments of US Telecom - the Broadband Association, p. 2.

prioritize middle mile deployment in areas without access to speeds of 25 Megabits per second (Mbps) download / 3 Mbps upload over areas without speeds of 100 Mbps download. Additionally, Cal Advocates strongly agrees with Center for Accessible Technology (CforAT) that the Commission should consider more than just broadband speeds to conduct the prioritization.<sup>3</sup> As Cal Advocates noted in opening comments to this ruling, the Commission's prioritization of areas for middle mile deployment should account for key community demographic factors.<sup>4</sup> When the Commission recommends priority areas for middle mile deployment, it should advance equity in California by ensuring that the most marginalized communities are not left behind. For example, the Commission should prioritize unserved communities within Tribal, Environmental and Social Justice (ESJ), and High Fire Threat District areas.<sup>5</sup>

The deployment of the state middle mile should account for broadband disparities facing underserved communities across the state. The Commission should not only prioritize marginalized communities but *ensure* that last mile service providers interconnecting to the state middle mile network provide affordable broadband service in those communities. Historically marginalized communities include tribal communities,<sup>6</sup> redlined communities, including communities historically redlined based on Home Owner's Loan Corporation (HOLC) designations,<sup>7</sup> and ESJ communities as defined by Cal Enviroscreen scores.<sup>8</sup>

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<sup>3</sup> CforAT Opening Comments, pp. 3-5.

<sup>4</sup> Cal Advocates Opening Comments on Assigned Commissioner's Ruling on Locations for a Statewide Open Access Middle Mile Network ("Cal Advocates Opening Comments"), p. 3.

<sup>5</sup> For Tribal and ESJ shapefiles, see the following paragraph. For High Fire Threat District areas, see the following CPUC link available as of 9/16/2021 at:  
<https://capuc.maps.arcgis.com/apps/webappviewer/index.html?id=5bdb921d747a46929d9f00dbdb6d0fa2>

<sup>6</sup> GIS files containing Tribal locations are available from the Governor's Office of Emergency Services GIS Data Hub. Available as of 9/16/2021 at: <https://gis-calema.opendata.arcgis.com/datasets/23348a6fb3e44322a0c0a862aba62a24/explore?location=37.248386%2C-117.089183%2C5.99>

<sup>7</sup> See original HOLC redlining designations at publicly available resources like Policy Map, available as of 9/16/2021 at: <https://www.policymap.com/maps?o=173350&ofilters=c4210&cx=-90.2335674036282&cy=38.64185345470613&cz=9&slc=HjmZPxJ>

<sup>8</sup> Cal Enviroscreen Scores are prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), and are publicly available at the OEHHA website as of 9/16/2021 at: <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30>

As of 2020, 19.3% of Native Californians lack access to fixed broadband at even 25 Mbps download / 3 Mbps upload.<sup>2</sup> Cal Advocates agrees with the Yurok Tribe's recommendation to prioritize routes that create last mile opportunities in previously overlooked reservations, tribal lands, and ancestral territories.<sup>10</sup> The Commission and California Department of Technology (CDT) should use this opportunity to ensure that all California Tribes are served with robust middle mile infrastructure. Additionally, in determining locations for state middle mile buildout to tribal locations, the Commission should work with Tribes to anticipate future needs for tribal last mile and affordability.

The Commission and the state of California have a responsibility to address systemic racism against Black, Latinx, Asian and Pacific Islander, and other people of color, as well as systemic disenfranchisement of low-income Californians, who are disproportionately Black and Latinx.<sup>11</sup> Tracking populations by race and income at a granular level by using publicly available census information can be augmented with HOLC redlining maps and Cal Enviroscreen data to ensure these populations are adequately served by the state middle mile network. Cal Advocates agrees with CforAT that the Commission should recommend that CDT accord the highest middle mile deployment priority to all areas currently unserved by middle mile and designated as "C - Definitely Declining" or "D - Hazardous" on the 1930s HOLC maps.<sup>12</sup> However, HOLC maps only apply to urban centers, therefore Cal Advocates recommends that the Commission include all areas currently unserved by middle mile with Cal Enviroscreen scores above the 75<sup>th</sup> percentile, or "disadvantaged communities,"<sup>13</sup> in its recommendation for highest middle mile deployment priority.

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<sup>2</sup> See Appendix 6 of the FCC's 2020 Broadband deployment report, available as of 9/14/2021 at: <https://www.fcc.gov/document/new-fcc-report-shows-digital-divide-continuing-close-0>

<sup>10</sup> Opening Comments of the Yurok Tribe on the Assigned Commissioner's Second Amended Scoping Memo and Ruling, p. 7.

<sup>11</sup> The Public Policy Institute of California, *Income Inequality in California*, "African American and Latino families are overrepresented at lower income levels." Available as of 9/14/2021 at: <https://www.ppic.org/publication/income-inequality-in-california/>

<sup>12</sup> CforAT Opening Comments, pp. 3-4.

<sup>13</sup> Disadvantaged communities were identified by direction of SB 535. More information from the California Office of Environmental Health Hazard Assessment available as of 9/16/2021 at: <https://oehha.ca.gov/calenviroscreen/sb535>

Parallel review of the California Interactive Broadband Map,<sup>14</sup> Cal Enviroscreen,<sup>15</sup> and HOLC maps<sup>16</sup> reveal similar patterns: unserved households tend to be in areas with high Cal Enviroscreen scores, which tend to be in historically redlined areas. For example, this pattern exists in the areas immediately surrounding downtown Oakland. The red areas in the following Enviroscreen and Redlining maps exhibit a characteristic “L” shape, with the vertical part of the “L” bounded approximately by the 880 and 980 freeways, and the horizontal part of the “L” extending to the southeast along the 880 freeway.

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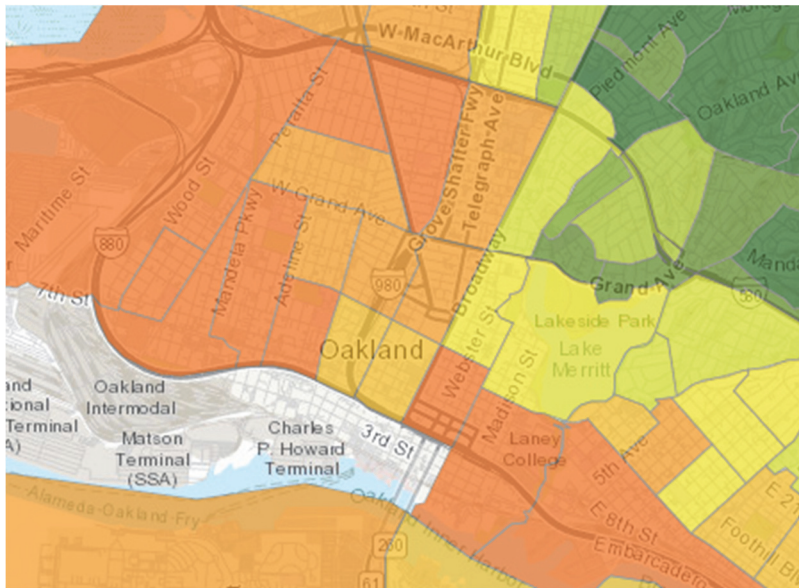
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<sup>14</sup> The California Interactive Broadband Map displays areas which are served and unserved with fixed broadband deployment. Available as of 9/16/2021 at: <https://www.broadbandmap.ca.gov/>

<sup>15</sup> As noted above, Cal Enviroscreen Scores available as of 9/16/2021 at: <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30>

<sup>16</sup> Redlining maps are publicly available from multiple sources, here Cal Advocates used the Mapping Inequality project from the University of Richmond, available as of 9/16/2021 at: <https://dsl.richmond.edu/panorama/redlining/#loc=13/37.81/-122.25&mapview=graded&city=oakland-ca>

**Figure 1: Cal EnviroScreen Scores Near Downtown Oakland<sup>17</sup>**



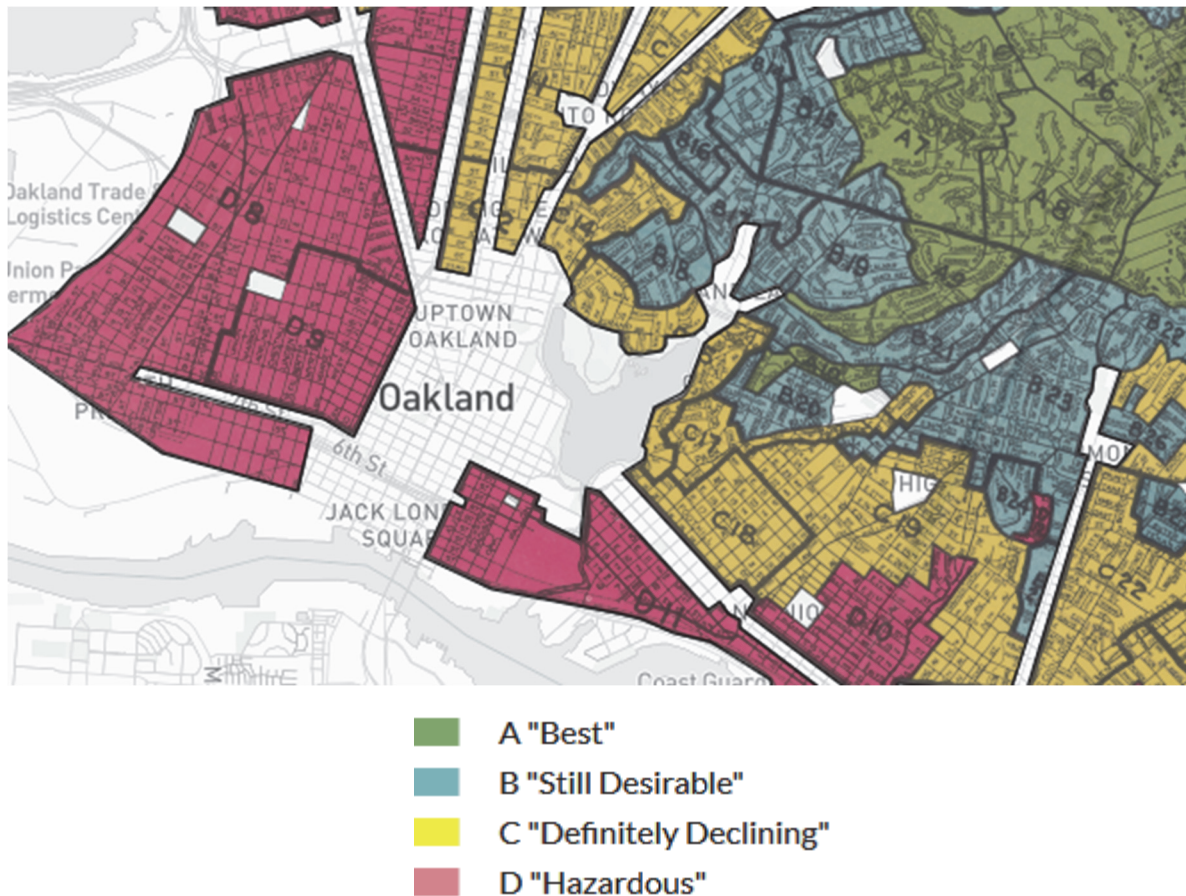
**CalEnviroScreen 3.0 Results (June 2018 Update)**



<sup>17</sup> As noted above, Cal EnviroScreen Scores available as of 9/16/2021 at:  
<https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30>



**Figure 2: Original Discriminatory HOLC Redlining Categorizations Near Downtown Oakland<sup>18</sup>**



According to the Commission’s Interactive Broadband Map, households which are unserved with fixed broadband tend to fall within areas with high Enviroscreen scores. As shown in Figure 3, most of the census blocks near downtown Oakland which are unserved with fixed broadband fall within the same “L” shapes shown in Figures 1 and 2.

<sup>18</sup> Redlining maps are publicly available from multiple sources, here Cal Advocates used the Mapping Inequality project from the University of Richmond, available as of 9/16/2021 at: <https://dsl.richmond.edu/panorama/redlining/#loc=13/37.81/-122.25&mapview=graded&city=oakland-ca>



**Figure 3: Unserved Census Blocks Near Downtown Oakland<sup>19</sup>**



*Note that the CA Interactive Broadband Map does not account for served status according to the 25 Mbps download / 3 Mbps upload threshold.*

**B. The Commission should disregard comments suggesting that ILEC middle mile infrastructure is available at affordable rates and is open access.**

The Commission should disregard AT&T California’s (U 1001 C, “AT&T”) comments regarding the availability of its middle mile transport offerings. AT&T’s opening comments state that because of the availability and affordability of its middle mile transport, the Commission should avoid deploying middle mile in areas where “one or more private entities have already deployed middle mile facilities.”<sup>20</sup> Cal Advocates supports leveraging existing middle mile

<sup>19</sup> The California Interactive Broadband Map displays areas which are served and unserved with fixed broadband deployment. Available as of 9/16/2021 at: <https://www.broadbandmap.ca.gov/>

<sup>20</sup> Opening Comments of AT&T California (U 1001 C) On Assigned Commissioner’s Ruling Dated August 6, 2021 Regarding Middle mile Broadband Network (“AT&T Opening Comments”), p. 13.

infrastructure. However, AT&T's comments fail to discuss potential barriers to accessing existing AT&T middle mile infrastructure, including lack of open access requirements and willingness of existing middle mile carriers to provide non-discriminatory access at affordable rates to last mile providers. The state's middle mile network cannot rely on Incumbent Local Exchange Carrier (ILEC) middle mile infrastructure for transport, as the open access requirements for ILECs middle mile infrastructure are subject to change in the near future due to the Federal Communications Commission (FCC) 2020 Report and Order regarding unbundled network elements (UNEs).<sup>21</sup>

In opening comments, AT&T stated that the Commission should not build where AT&T's network exists because its network has sufficient capacity, affordable rates, and is open access.<sup>22</sup> However, AT&T is currently required by FCC rules to offer access to dark fiber transport facilities.<sup>23</sup> As The Utility Reform Network's (TURN) opening comments point out, "in October 2020, the FCC issued a Report and Order that eliminates the requirement of [ILECs], including AT&T and Frontier, to provide dark fiber transport as [an unbundled network element (UNE)] to competitive telecommunication carriers."<sup>24</sup> The FCC's Report and Order eliminates its access requirements in census blocks in urbanized areas, that is, "areas of 50,000 or more people."<sup>25</sup> It also eliminates unbundling requirements for dark fiber transport "within a half mile of competitive fiber networks."<sup>26</sup> The FCC's rule grants "8 years for competitive LECs to transition from UNE Dark Fiber Transport."<sup>27</sup> This may eliminate competitors' access to significant portions of AT&T's middle mile infrastructure, especially in urban areas in 2028. In a filing in the same docket with the FCC, Uniti Fiber wrote that it was "not aware of evidence that [ILECs] have offered commercial replacement products for UNEs recently subject to

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<sup>21</sup> FCC. Report and Order In FCC WC Docket 19-308 ("FCC Report and Order"). Available as of 9/16/2021 at <https://www.fcc.gov/document/fcc-modernizes-unbundling-and-resale-requirements-0>

<sup>22</sup> AT&T Opening Comments, p. 2.

<sup>23</sup> Title 47 of the Code of Federal Regulations § 51.319 (c)(2)(iv)

<sup>24</sup> Opening Comments of the Utility Reform Network on the Assigned Commissioner's Ruling Seeking Comment for the Locations for a Statewide Open-Access Middle mile Broadband Network, p. 5.

<sup>25</sup> FCC Report and Order in Docket 19-308. Paragraph 63 available at <https://www.fcc.gov/document/fcc-modernizes-unbundling-and-resale-requirements-0>

<sup>26</sup> FCC Report and Order, paragraph 3.

<sup>27</sup> FCC Report and Order, paragraph 14.

forbearance.”<sup>28</sup> Previous FCC instances of forbearance from UNE regulation has resulted in those UNEs no longer being available for competitive use.

Even with the UNE requirements in effect, ILEC business practices have made it challenging for competitors to use those facilities. Sonic Telecom LLC’s (U 7002 C, “Sonic”) comments to the FCC are worth quoting at length:

“...in areas where the jointly-owned utility pole is overloaded, as owner of the communications portion of the pole, the ILEC will not reinforce the pole to resolve the preexisting safety issue, and to support Sonic’s own fiber attachments. The ILEC has also created hurdles in access to conduit, such as requiring separate Sonic vaults instead of allowing Sonic to place splice cases to accommodate fiber in the conduit and vault system. Other obstacles include delayed processing of routine applications, delayed access to information about the locations of poles and conduit, changing and undisclosed procedural requirements, and other artificial barriers to competitive fiber deployment.”<sup>29</sup>

Note that “AT&T [is] the incumbent in the area Sonic operates.”<sup>30</sup> AT&T has established a pattern of anti-competitive behavior with respect to its UNEs. Sonic’s comments in the aforementioned FCC proceeding suggest that AT&T’s middle mile services are not as readily available as AT&T’s opening comments suggest.

While the effects of the phase out of the FCC UNE requirements are uncertain, it is likely that the phase out will reduce competition among last mile providers and Internet Service Providers. In a Petition for Rehearing to the FCC, Sonic argues that the FCC’s Report and Order “sets the country on a trajectory of an ILEC monopoly in FTTH build in urbanized areas.”<sup>31</sup> Sonic’s comments suggest that after the FCC’s unbundling rules are eliminated, ILECs will be able to, and will be incentivized to, create monopolies in urbanized areas by excluding competitors from use of UNEs.

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<sup>28</sup> Comments of Uniti Fiber in FCC WC Docket No. 19-308. February 5, 2020, p. iii.  
<https://www.fcc.gov/ecfs/filing/1020599704104>

<sup>29</sup> Comments of Sonic Telecom, LLC in FCC WC Docket No. 19-308, February 5, 2020. p. 9.  
<https://www.fcc.gov/ecfs/filing/10206042720214>

<sup>30</sup> Comments of Sonic Telecom, LLC in FCC WC Docket No. 19-308, February 5, 2020. p. 2.

<sup>31</sup> Petition for Reconsideration of Sonic Telecom, LLC in FCC WC Docket 19-308. February 8, 2021, p. 5  
<https://www.fcc.gov/ecfs/filing/10208128748522>

Given the changes in FCC rules and AT&T's established pattern of anti-competitive behavior, the Commission should disregard AT&T's comments regarding the availability of their middle mile infrastructure. If past ILEC behavior is any indication, it is unlikely that AT&T will continue to offer competitors access to its UNEs after the FCC's requirements are rescinded. Moreover, AT&T has established a pattern of anti-competitive behavior which suggests that its middle mile services are not nearly as available as it claims. Since it is uncertain whether AT&T will offer non-discriminatory access to its middle mile infrastructure after the FCC's regulations end, the Commission should disregard AT&T's middle mile infrastructure as open access.

**C. The Commission should disregard proposed requirements to only build middle mile in areas with existing last mile infrastructure or planned last mile projects.**

In opening comments, AT&T recommends that the statewide middle mile facilities should only be built in areas that connect to existing last mile facilities or planned last-mile facilities that have received regulatory approval and appropriate funding.<sup>32</sup> These requirements are overly prescriptive because they would exclude areas that currently lack access to middle mile infrastructure and where there is potential interest from last mile providers and the community to serve the area.

Instead, the Commission should recommend that CDT build the statewide middle mile network in areas where CDT has (1) commitments or strong interest from potential last-mile Internet Service Providers or local government to offer broadband service, and (2) support from communities, including anchor institutions, local governments, and potential customers. This requirement will ensure that unserved and underserved communities where the state middle mile network is built will result in last-mile broadband service to the community.

**D. The Commission should disregard the Small LEC's comments regarding CASF and the CHCF-A.**

In opening comments, the Small LECs referred to issues regarding the impacts of SB 156 to California's universal service public purpose programs.<sup>33</sup> The Small LECs stated that "SB 156 should not be viewed as a replacement for, but only as a supplement to" CASF and CHCF-A. The Middle Mile Ruling at hand is focused on discussing locations for a statewide open access

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<sup>32</sup> AT&T Opening Comments, p. 7.

<sup>33</sup> Small LECs comments, pp. 1, 4.

middle mile network. To the extent that SB 156 affects CASF and CHCF-A as referenced by the Small LECs, the impacts to those programs are best addressed in the respective CASF and CHCF-A proceedings. The Commission should disregard the Small LECs' comments regarding the public purpose programs and address impact to broadband deployment in those programs separately.

**E. The Commission should disregard comments that characterize development of a statewide middle mile network as overbuilding.**

The Commission should disregard CVIN LLC's comments characterizing the statewide middle mile network as an exercise in "overbuilding."<sup>34</sup> The statutory mandates of SB 156 guarantee that there will not be overbuilding of existing open access, affordable middle mile.<sup>35</sup>

### **III. CONCLUSION**

Cal Advocates recommends that the Commission:

- Prioritize marginalized and historically excluded communities for middle mile deployment;
- Disregard comments suggesting that incumbent local exchange carrier (ILEC) middle mile infrastructure is available at affordable rates and is open access;
- Disregard proposed requirements to only build middle mile in areas with existing last mile infrastructure or planned last mile projects;
- Continue to focus on seeking information regarding the location of the state middle mile network and disregard the Small LECs' comments regarding CASF and CHCF-A programs; and,
- Disregard comments that characterize development of a statewide middle mile network as overbuilding.

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<sup>34</sup> See Comments of CVIN LLC DBA Vast Networks (U7216C) on Assigned Commissioner's Ruling, p. 7.

<sup>35</sup> See Section 11549.54(b) of SB 156. This section specifies that "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."

Respectfully submitted,

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