

**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
(Filed September 10, 2020)

**REPLY COMMENTS OF THE NATIONAL DIVERSITY COALITION
TO E-MAIL RULING ORDERING ADDITIONAL COMMENTS
AS PART OF MIDDLE-MILE DATA COLLECTION**

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October 15, 2021

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I. INTRODUCTION

Pursuant to the August 6, 2021 *Assigned Commissioner’s Ruling* (“Ruling”), and the September 9, 2021 *E-Mail Ruling Ordering Additional Comments As Part of Middle-Mile Data Collection* (“E-Mail Ruling”), and in accordance with Rule 6.2 of the California Public Utilities Commission (“Commission”) Rules of Practice and Procedure, the National Diversity Coalition¹ (“NDC”) respectfully submits the following Reply Comments to Additional Opening Comments.

II. DISCUSSION

A. The Commission Must First Identify, Then Prioritize the Path of Deployment to Reach and Connect Unserved Households

Along with other parties including The Advanced Communications Law & Policy Institute (“ACLP”)² NDC supports the position of California Emerging Technology Fund (“CETF”) that

¹ National Diversity Coalition members include the National Asian American Coalition (NAAC), Advancing the Seed, Inc., African American Chamber of Commerce, African American Fire Fighter Museum, Asian Business Association, Asian Journal, Boys of Color of Santa Ana, Community Connections LLC, COR Community Development Corporation, El Mundo, Impact Southern California, Instituto de Avance Latino, Island Pacific Supermarkets, The Jesse Miranda Center for Hispanic Leadership, Korean American Coalition LA, Latino Coalition for Community Leadership, Los Angeles Latino Chamber of Commerce, Macedonia Community Development Corporation, Network of Myanmar American Association, Santa Maria Group, OASIS Center International, Templo Calvario CDC, and Youth Business USA. In numerous prior proceedings before this Commission, NDC members have appeared under the name “Joint Minority Parties” or represented by NAAC.

² ACLP Comments at 24.

The primary purpose of the Statewide Middle-Mile Network is to enable broadband service to unserved locations; losing focus on this primary purpose will waste resources and cause the state to end up with the “Middle-Mile To Nowhere.” Only after there is a middle-mile route to an unserved community, along the “path of deployment” of such middle-mile project, all unserved anchor institutions should be connected. *The order is important. The goal of the law is to connect unserved households.* As a secondary benefit, anchor institutions that have no service along the path may be served also.³

Various parties have addressed the issue of the middle mile network providing direct service to anchor institutions,⁴ including NDC.⁵ While this is a reasonable concept, as CETF explains, the order is important. The priority should be getting homes connected. To the extent that homes remain unconnected, those residents will need to rely on anchor institutions to access public broadband, and NDC would support seeing more anchor institutions receive direct service from the middle-mile network, so they can make it available to the community. However, NDC maintains our earlier concern that the operator of the statewide middle-mile network may not be as experienced or efficient in providing direct service as established ISPs and recommends that the Commission instead require last-mile ISPs to provide affordable service to anchor institutions, but as a secondary benefit.

On September 2, 2021, The California Department of Technology (“CDT”) announced that the State of California retained CENIC California Middle-Mile Broadband Initiative, LLC (“CENIC California MMBI”) as the California middle-mile broadband network third-party administrator. Pursuant to Cal. Gov. Code § 11549.53(b)(1) CENIC will “manage the development, acquisition, construction, maintenance, and operation of a statewide open-access middle-mile broadband network, including the creation of rural exchange points,”⁶ in other

³ CETF Comments at 11-12 (*emphasis added*).

⁴ Public Advocates Opening Comments at 9; The Utility Reform Network (TURN) Opening Comments at 11.

⁵ NDC Comments at 9.

⁶ Cal. Gov. Code § 11549.53(b)(1).

words – “construct and establish the network.”⁷ Additionally, Section (b)(2) states that the “third-party administrator (“TPA”) retained by the office shall be a California based nonprofit entity with demonstrated experience serving public libraries, elementary and secondary schools, and institutions of higher education with broadband connectivity.”⁸ While there may be many California based nonprofit entities capable of overseeing the building of the Statewide Middle-Mile Network the statute specifically narrows the field to those entities with demonstrated experience serving educational institutions and other anchor institutions. NDC is concerned that the appropriate focus of first reaching unserved communities might shift, albeit unintentionally. The Commission must provide clear direction to the TPA to proceed carefully and ensure that the overarching goal of connecting unserved households is met first.

B. The Commission Must Analyze the Successes and Failures of Other States Who Have Built Out Middle-Mile Networks

Building a middle-mile network to reach the millions of Californians with no access to high-speed broadband service will be a daunting task but not insurmountable if done cautiously and prudently. The Advanced Communications Law & Policy Institute (“ACLP”) has provided the results of middle-mile network case studies from twelve states and has offered suggestions on positive outcomes and pitfalls to avoid ensuring that California’s \$3.25 billion allocation is “invested in the most impactful manner possible.”⁹

Kentucky’s KentuckyWired is an unfinished middle-mile network being built to “bring faster, more reliable internet to every corner of the Commonwealth.”¹⁰ It is estimated that the total cost will be five times more than the initial estimate. Kentucky, like California, prioritized

⁷ <https://cenic.org/news/state-selects-ccmmbi>.

⁸ Cal. Gov. Code § 11549.53(b)(2).

⁹ The Advanced Communications Law & Policy Institute (ACLP) at 2.

¹⁰ *Id.* at 8.

unserved and underserved areas but continued to build out the middle-mile infrastructure statewide and ran into massive financial difficulties along with delays which have nearly debilitated the entire project. ACLP’s “Takeaway” is that “[a] more targeted strategy that involved the piecemeal deployment of middle-mile infrastructure in truly unserved areas, coupled with outreach to potential partner ISPs to ensure that the network would be used, might have yielded more impactful outcomes in Kentucky.”¹¹ NDC recommends that the Middle-Mile Advisory Committee, who will monitor the development and construction of this broadband infrastructure, profit from Kentucky’s mistakes as “flexibility in route planning, implementing an iterative approach to deployment, and prioritizing certain areas or consumers first all go together. In California, prioritizing truly unserved areas will give the state time to decide where additional middle-mile infrastructure might be necessary.”¹²

In contrast, Michigan’s Merit Network, which began in 1966, began an expansion of their network in 2010 after receiving “\$128 million in federal stimulus funding, allowing it to grow the network by 59%.”¹³ ACLP’s “Takeaway” states that “this network, which appears to be self-sustaining, took decades to arrive at this point. Like other state networks profiled here, an iterative approach to network deployment and to the expansion of services offered helped to assure long-term sustainability. Applying these lessons in the present context, it might be useful to evaluate scenarios where the state does not spend all the funding available for its middle-mile network, focusing instead on using only those funds necessary to build the infrastructure where it is clearly needed.”¹⁴ NDC supports this approach. The many parties to this proceeding have offered their various analyses on how and where to build the middle-mile network, each one with

¹¹ ACLP at 9.

¹² *Id.* at 28.

¹³ *Id.* at 11.

¹⁴ *Id.* at 12-13.

their own rationale, however we must continue to keep all eyes focused on the goal. NDC supports CETF's recommendation "that all middle-mile investments should be driven by a priority focus on reaching last-mile unserved households, especially high-poverty areas and Tribal Lands."¹⁵ Employing the iterative approach suggested by ACLP and building the network piecemeal is a sound method that the Commission should consider. There is no need to spend \$3.25 billion building a "Middle-Mile To Nowhere", when judicious planning can bring Broadband for All to Californians.

III. CONCLUSION

NDC appreciates the thoughtful approach the Commission has taken by seeking additional comments on the development of a statewide open-access middle-mile network. It is an enormous undertaking and clearly needs careful consideration to be successful. NDC looks forward to continuing to engage with the Commission to bring this project to fruition.

October 15, 2021

Respectfully Submitted,

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¹⁵ CETF at 6.