

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

**Communications Division  
Broadband, Video, and Market Branch**

**RESOLUTION T-17525  
June 29, 2017**

**RESOLUTION**

**Resolution T- 17525:** Approval of funding for the grant application of Race Telecommunications, Inc. (U-7060-C), from the California Advanced Services Fund up to the amount of \$27,629,599 for the Gigafy Phelan underserved broadband project in San Bernardino County.

**I. Summary**

This Resolution approves funding up to the amount of \$27,629,599 from the California Advanced Service Fund (CASF) for the grant application of Race Telecommunications, Inc. (Race), to construct the Gigafy Phelan Project. The Gigafy Phelan Project will install a fiber-to-the-premises (FTTP) system in the underserved communities in and around Phelan in San Bernardino County.

The Gigafy Phelan Project will extend gigabit-capable high-speed internet service to an estimated 7,606 households spread amongst about 98 square miles in unincorporated San Bernardino County communities of Phelan, Piñon Hills, Oak Hills, and parts of Hesperia, which are exurban of the Inland Empire. The proposed project would also provide additional broadband infrastructure in the area that would benefit educational, medical, and public safety entities.

The Gigafy Phelan Project, at the time of analysis,<sup>1</sup> was the highest-scoring pending project application on the CASF's project evaluation scoring matrix (outlined in D.12-02-015), and both the Phelan and Piñon Hills areas to be served by the project are Commission-adopted "priority areas."<sup>2</sup>

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<sup>1</sup> As this resolution was being prepared, a last-mile application to serve parts of Fresno County was submitted and achieved a slightly higher score on the matrix. That project was approved on May 11, 2017 in Resolution T-17563.

<sup>2</sup> Per Resolution T-17443, approved June 27, 2014. Phelan and Piñon Hills were originally identified as "priority areas" by the Inland Empire Regional Broadband Consortium. The regional consortia identified priority areas based on several considerations, including: social and economic impact, feasibility, anchor institutions, income levels, opportunities for resource management, and number of households without broadband access at served speed.

Additionally, concurrent with Commissioner requests for further staff analysis of CASF projects, Phelan was identified by staff as a “high-impact” area for broadband deployment.<sup>3</sup>

## **II. Applicant Request**

On August 10, 2015, Race submitted an application for CASF grant funding for underserved areas in San Bernardino County, including the communities of Phelan, Piñon Hills, Oak Hills, and unincorporated areas of Hesperia. Race requested \$48,295,774, which included 60 percent plus 18.7 percent of CASF costs in contribution in aid of construction (CIAC)<sup>4</sup> (based on an estimated total project cost of \$75,420,613). Race subsequently modified its application and requested 50 percent grant funding of \$23,148,793 (based on an estimated total project cost of \$46,297,586) in response to a parallel application for the same area,<sup>5</sup> which was submitted on January 22, 2016. In September 2016, after CD again posted the amended project because of significant changes from its original posted application, Charter Communications (Charter) issued a timely challenge which reduced the eligible area for a CASF subsidy.

On January 30, 2017, Race revised its application and requested 60 percent grant funding of \$28,572,819 (based on an estimated total project cost of \$47,621,364) for the Gigafy Phelan Project, which proposes to cover 98 square miles and serve an estimated 8,361 housing units. Upon further review after comments were submitted, CD determined the project would actually serve 7,606 households, not housing units, and the grant was revised downward to \$27,629,599 (60 percent of an eligible \$46,049,332).<sup>6</sup> Key project information and maps are shown in Appendices A & B.

*Geography and topography:* The proposed project area is situated in southwest San Bernardino County, southwest of Victorville and north of Wrightwood. The project is roughly bounded on the west by the Los Angeles County line, on the south by the San Gabriel Mountains, on the east by Interstate 15 and US Highway 395, and on the north by an irregular series of streets that match the boundaries of “served” status as determined by the California Broadband Availability Map. Several blocks were

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<sup>3</sup> Communications Division white paper: “High Impact Areas for Broadband Availability,” page 9. Published February 2017.

<sup>4</sup> CIAC represents potential funding in the event that the CASF grant award is subject to federal and/or state income taxes.

<sup>5</sup> From Ultimate Internet Access, Inc., (UIA) in an application dated January 26, 2016. This application was subsequently withdrawn following the challenge outlined in Section III.

<sup>6</sup> After following up with Race and checking the Census data, CD determined that Race had actually used “housing units,” rather than “households” in its calculations. See Section VII for discussion.

CD/BJ

determined as “served” after staff upheld a challenge (discussed in Section III) by Charter, resulting in areas being removed within the project area. See Appendix B, project location map.

The topography is flat and wide-open where the bulk of the households exist, but rapidly becomes mountainous in the southern parts, with altitudes ranging from around 3,300 feet on the valley floor rising to nearly 5,000 feet. The area is considered high desert.

Topography concerns are expected to slightly increase the cost of this project. For example, Race expects to use up to 15,000 existing utility poles in the Phelan area. Because the Phelan/Piñon Hills region is at high altitude, General Order 95 requires that poles in the area be evaluated under strict “heavy loading” standards. Using those standards, Southern California Edison (SCE) estimated that about nine percent of poles in the Phelan area are statistically likely to fail and would need to be replaced over the next five years — regardless of any additional weight (such as that of a fiber cable) being added to the pole.<sup>7</sup>

*Applicant:* Race has a Certificate of Public Convenience and Necessity (CPCN) (U-7060-C) and has been a fiber-based CLEC provider of next-generation Voice Over Internet Protocol (VoIP), Internet Protocol television (IPTV), and traditional cable/satellite television for more than 12 years. Race Telecommunications was established in 1995, and has expanded significantly in the past decade. The company specializes in scalable fiber-optic networks, such as the one proposed here. Race has been awarded eight prior CASF grants (including four awarded in 2016) since the program was implemented, successfully completing four thus far, with the others under construction.

*Project:* The Gigafy Phelan Project will extend gigabit-capable high-speed Internet access to an estimated 7,606 households, an estimated 85 businesses, and numerous schools, spread amongst about 98 square miles in San Bernardino County desert communities, including Phelan, Piñon Hills, Oak Hills, and unincorporated areas of Hesperia (Appendix B). The proposed project will further provide redundant broadband infrastructure in the area that will potentially provide additional benefits to educational, medical, and public safety entities.

The proposed network would be a robust fiber-to-the-premises (FTTP) system with two distinct backhaul sources: one feed from Barstow, to the northeast of the project area, connecting to the partially CASF-funded Digital 395 network; and the other linking to

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<sup>7</sup> Per telephone call with Cindy Jacobs, Manager of Regulatory Policy, Internal Controls and Joint Pole Organization in SCE’s Pole Program Management Department, April 13, 2016.

Los Angeles via dark fiber leased from Zayo and secured with an indefeasible right of use agreement. The redundant backhaul is designed to provide sufficient capacity for the advertised speeds and will be scalable to need.

### **III. Notice, Challenge and Competing Project**

On August 10, 2015, Communications Division (CD) posted the proposed project area map, census block groups (CBGs) and zip codes for the Gigafy Phelan Project on the Commission's webpage under "CASF Application Project Summaries" and also sent notice regarding the project to its electronic service list. CD received no initial challenges to the project, nor were there any commitments made by an existing provider to upgrade service before the November 1, 2014, "first right of refusal" deadline.

In January 2016, while CASF staff was analyzing Race's proposal, Ultimate Internet Access (UIA) submitted an application for Phelan and the surrounding area, which proposed to serve approximately 10,450 households,<sup>8</sup> over 122 square miles, with a requested subsidy of \$21,638,828. Like Race, UIA would build a FTTP system with 1 Gbps upload and download capability. (See Section IV-C for a brief comparison of the UIA and Race proposals.)

Subsequently, Race made several significant modifications to its proposed project, including cost-savings measures and increasing the proposed project's area to cover areas UIA had proposed to serve. Because the proposed project had changed significantly from the one initially proposed, CD posted a revised project summary and maps on the Commission's webpage, and opened a new public challenge period. That challenge period opened on September 26, 2016, and closed on October 11, 2016. Staff received one challenge, from Charter.

Charter's challenge asserted that it was planning, on or before December 31, 2016, to begin offering Internet service capable of advertised speeds of 60 Mbps down/4 Mbps up in its existing video franchise footprint in Phelan.<sup>9</sup> CD's review of both Phelan proposals was put on hold, pending further information from Charter.

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<sup>8</sup> UIA's application indicated it would serve 10,799 homes, but CD's subsequent analysis indicated it would serve approximately 10,450.

<sup>9</sup> Charter was required to increase broadband deployment to 98 percent of the households within each census block within its franchise and operating service areas before December 31, 2019, as part of Application 15-07-009 (page 57).

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On January 3, 2017, Charter informed CD that it had completed its upgrades in the area and submitted “serviceable address” data that indicated it had expanded its service into the Phelan area. CD determined that most of the more than 750 census blocks updated by Charter were outside the proposed Race project area, but about 360 census blocks, with an estimated 1,080 serviceable address, were within the area and CD removed those blocks from CASF eligibility.<sup>10</sup>

The new eligible areas were sent to both Race and UIA, with a January 17, 2017, deadline to notify CD if they wished to update their proposal, and a January 31, 2017, due date for the details of the update. While UIA acknowledged receipt of the Charter information, UIA did not update its proposal, and as a result, CD considered its application for Phelan withdrawn. Race agreed to update its proposal on January 16, 2017, and submitted CD an updated proposal on January 30, 2017. The updated proposal is reflected in this resolution.

#### **IV. Project Review**

##### **A. Project Area Eligibility**

To qualify for the CASF program, an applicant is required to submit shapefiles of the proposed project. CD reviews the submitted shapefiles and compares them with United States Census data and the California Interactive Broadband Availability map<sup>11</sup> to determine whether the area is unserved or underserved.

No wired, fixed wireless, or mobile wireless providers currently offer served speeds in the updated project area, according to both the California Interactive Broadband Availability Map and reports from local stakeholders.<sup>12</sup> According to the map, about 21 percent of the original footprint of the project is completely unserved and 79 percent underserved. After reviewing Race’s application materials and removing the challenged Census Blocks, CD concluded that the entire remaining area proposed for the Gigafy Phelan Project is eligible for CASF funding.

##### **B. Project Criteria Evaluation**

CD evaluated Race’s application with respect to the scoring criteria defined in D.12-02-015, Appendix 1, Section VIII (Scoring Criteria). The scoring criteria include: (i) Funds Requested per Potential Customer, (ii) Speed, (iii) Financial Viability, (iv) Pricing, (v)

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<sup>10</sup> Race still intends to serve the areas removed by the Charter challenge, wholly at its own expense.

<sup>11</sup> Available at <http://www.broadbandmap.ca.gov/map/>.

<sup>12</sup> As noted, areas recently updated by Charter were excluded from the current proposal.

Total Number of Households in the Proposed Area, (vi) Timeliness of Completion of Project, (vii) Guaranteed Pricing Period, and (viii) Low-Income Areas. CD also conducted a qualitative evaluation of the project area, existing infrastructure, and community needs.

The Gigafy Phelan Project was, at the time of analysis, the top-scoring project under the scoring criteria. It scored particularly well as compared to previously approved CASF projects because it proposes to offer very high speeds at a low-cost-per-megabit to a high number of households.<sup>13</sup>

*Funds per household:* The Gigafy Phelan Project is slightly higher than most CASF projects, with a projected subsidy of \$3,633 per household, below the mean of just over \$4,512 for all previously approved last-mile projects.<sup>14</sup> The project is well below the \$8,718 median per-household subsidy of the seven fiber-to-the-premise projects approved between January 1, 2015, and August 1, 2016.

*Speed:* The proposed 1 GB symmetrical speed offering significantly exceeds the 6/1.5 benchmark set by the Commission. This project offers faster speeds than the average of previously awarded last-mile projects.

*Financial Viability:* Based on the pro forma financial statements submitted by Race, CD determined that Race is a financially viable company. For the project, Race projected positive annual earnings before interest and taxes (EBIT).<sup>15</sup>

An estimated 8,361 housing units are in the area, per the 2010 Census. Of those, Race has projected a 20-percent take rate in the first year of the program, with the overall take rate rising to 68 percent of potential customers (more than 5,685 subscribers, based on 8,361 housing units) after five years. This rate is comparable to what CD has seen in similar projects and is reflective of Race's reported take rates in other projects.

*Pricing:* Race has committed to a multiple-tier broadband pricing plan under the terms shown in Table 1 for five years (three more than required under CASF rules), starting from the completion date of the entire proposed project. There is no long-term commitment required from subscribers.

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<sup>13</sup> Compared to all last-mile projects in the current rolling applications cycle, Race's Gigafy Phelan Project was tied for fastest in speed, lowest in cost-per-megabyte, and highest in terms of number of households served.

<sup>14</sup> Up through December 31, 2016. Excludes rescinded projects.

<sup>15</sup> Based on the 5-Year Pro Forma Statements submitted by Race.

<b>Table 1 — Proposed Pricing (broadband only)</b>		
Residential Tiers		
<i>Tier Name</i>	<i>Speed (symmetrical in Mbps)</i>	<i>Price per month</i>
Entry Level	25	\$25
Max Level	1000	\$60
Business/Institutional		
Entry Level	25	\$60
Max Level	100	\$200
Options		
Setup fees:	\$0	
Wireless router:	\$10/month	
Unlimited voice service:	\$10/month (with “max level” service)	

Price per megabit is a commonly accepted metric for determining the value of broadband service and has been part of the CASF scoring metric since 2012.<sup>16</sup> Race has very low price-per-megabit customer costs, with an estimate of \$0.50 for its entry-level plan and \$0.03 for its max-level plan.<sup>17</sup>

*Households in project area:* CD estimated that, if approved, the proposed project will provide access to about 7,606 households – the most households ever given access by a CASF-subsidized last-mile project. As mentioned above, an estimated 8,361 housing units are in the area, per the 2010 Census.

*Timeliness of completion:* Race confirmed that the proposed project will be finished within the 24-month construction timeline required. Race’s prior CASF projects have successfully either met deadlines or been only slightly delayed by exogenous factors.

*Guaranteed pricing period:* The applicant has committed to a pricing plan of five years from the completion of construction, which is three years longer than the two-year requirement.

*Low-income areas:* Based on the 2010 US Census estimates, the weighted median household income in the area is \$52,951. This is below the 2010 statewide median household income of \$59,540.

<sup>16</sup> D.12-02-015, Appendix 1 — *Revised Application Requirements and Guidelines*, page 23.

<sup>17</sup> Price per megabit estimates are determined by dividing the advertised price for that tier by the sum of the combined download and upload speeds (in megabits) and then rounding to the nearest cent.

### C. Project History and Comparison to Competing UIA Proposal

On August 10, 2015, Race submitted an application to cover most of the territory that is now included in the current boundaries requested for the project.<sup>18</sup> In January 2016, UIA submitted an application for the proposed project area. Like Race, UIA would build a FTTP system with 1 Gbps upload and download capability.

In ensuing consultations with staff and in response to UIA's application, Race informed CD over the course of several correspondences that it wished to:

- Withdraw its request for CIAC.
- Expand the geographic footprint of its initial proposal to also encompass most areas that the UIA Phelan Project included.
- Reduce its monthly residential price for full symmetrical 1 Gbps Internet service from \$100 to \$60.
- Increase its price commitment from the required two years after the completion of the project to five years.

Before CD could issue a resolution selecting either applicant, Charter issued its challenge. CD upheld the challenge, which removed more than 1,000 households from eligibility for the CASF grant. Following the changes, UIA chose to not submit an updated Phelan plan. Race did update its plan, removing the challenged areas, but leaving other commitments (such as the lowered service costs, expanded footprint, and longer price commitment) intact.

### D. Safety and Community Input Considerations

The southern edge of the project area is vulnerable to wildfires. Notably, the August 2016 Blue Cut Fire encroached into the proposed area of this project. Race's proposed infrastructure could potentially facilitate the community's interaction with first responders and health care professionals by supplying ubiquitous broadband service and providing supplemental telecommunications infrastructure in a largely rural area.

Race further proposes to provide voice service as an optional add-on (see section V-G, below), which will be required to meet all applicable safety standards, including battery backup, E911 data and access to local PSAPs.

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<sup>18</sup> For current proposed boundaries, please refer to Appendices A and B.



CD/BJJ

*Site Visits:* A CASF staff member toured the area in January 2015 while evaluating the nearby areas of Helendale and Wrightwood, which were awarded CASF infrastructure grants later that year (Resolutions T-17478 and T-17475, respectively). Because Phelan was a priority area and the Inland Empire Regional Broadband Consortium informed staff that it was soliciting grants for the area, Phelan was included in the visit. Staff conducted the driving tour with a director of the Phelan-Piñon Hills Community Services District, who outlined the history and economics of the district and explained the need for high-speed Internet services in the community.

*Community Support:* Support letters from community members expressed a sentiment for greater connectivity in Phelan. San Bernardino County First District Supervisor Robert Lovingood wrote that County Government “strongly supported” the project, especially because more than 25 percent of the homes in the area are unable to get any sort of service at all, with the rest underserved.

The Commission also received multiple letters from local residents, businesses, community organizations and local government expressing support for the project. Those providing support letters include:

- Inland Empire Economic Partnership
- United Way 211 of San Bernardino County
- San Bernardino Associated Governments
- California Telehealth Network
- High Desert Community Foundation
- Inland Empire Regional Broadband Consortium

*Priority Areas:* The Inland Empire Regional Broadband Consortium has designated two communities in the proposed project area as “priority areas” — Phelan and Piñon Hills. These priority areas were named at the March 2014 CASF Consortia Summit in Sacramento and confirmed by the Commission as part of Resolution T-17443 on June 27, 2014.

#### E. Staff Recommendation

CD staff finds that the Race Gigafy Phelan Project meets CASF program rules and aligns with CASF’s goal to encourage the deployment of high-quality, advanced information and communications technologies to all Californians in order to promote economic growth, job creation, and substantial social benefits. The project would bring communications to households without broadband and would improve services to an area in need of advanced services.

Further, Staff finds that the Phelan project area should be considered a “high-impact area.” Staff conducted independent analysis to determine “high-impact areas” in California. Such areas must exhibit a sufficient potential subscriber base capable of generating revenues for the service provider to maintain the network, relatively high household density to reduce overall per household cost, contain unserved households, lack significant competition that would undermine survivability of the project, and lack challenging terrain that would escalate deployment costs.<sup>19</sup>

Therefore, CD recommends the Race Gigafy Phelan Project be approved for a CASF grant award of \$27,629,599.

## **V. Compliance Requirements**

Race is required to comply with all the guidelines, requirements, and conditions associated with the grant of CASF funds as specified in D.12-02-015, D.14-02-018, and Resolution T-17443. Such compliance includes, but is not limited to:

### A. California Environmental Quality Act (CEQA)

All CASF grants are subject to CEQA requirements unless the project is statutorily or categorically exempt pursuant to the CEQA Guidelines.

Race has provided the Commission with basic construction plans for the proposed project area and area and Energy Division has confirmed that the project is categorically exempt from CEQA review, pursuant to CEQA Guidelines sections 15301 (Existing Facilities) and 15304 (Minor Alterations to Land).

Race has focused its network design around utilizing existing rights of way, above ground and aerial construction in already disturbed areas, leasing dark fiber where available, and utilizing easements to lessen the environmental impact. Race is expected to obtain the required utility permits to allow for fiber installation on existing utility poles and easements.

### B. Deployment Schedule

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<sup>19</sup> Staff held an informal public workshop on February 28, 2017, and comments are being submitted regarding the proposed “high-impact areas.” One of the thirteen locations will be eliminated from the list due to erroneous data. As of the date of this draft resolution, the Commission has not officially adopted the staff analysis.

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The Commission expects Race to complete the project within 24 months from the start date (as determined by the procedure in the next paragraph). If the applicant is unable to complete the proposed project within the 24-month timeframe requirement, Race must notify the CD Director as soon as it becomes aware of this possibility. If such notice is not provided, the Commission may reduce payment failure to satisfy this requirement.

#### C. Execution and Performance

CD and Race shall determine a project start date after Race has obtained all permitting approvals. Should Race, or any contractor it retains, fail to commence work by the designated date, upon five days written notice to the Race, the Commission may terminate the grant. In the event that Race fails to complete the project in accordance with the terms of CPUC approval as set forth in this resolution, Race must reimburse some or all of the CASF funds that it has received. Race must complete all construction covered by the grant on or before the grant's termination date.

#### D. Performance Bond

Because the matching funds for this project come in whole from an existing capital budget and Race operates under a CPCN, no performance bond is required under CASF rules.

#### E. Price Commitment Period

The minimum required price commitment period for broadband service to all households within the project area is two years. Race guarantees the price of service offered in the proposed project area for five years starting from the completion date of the entire proposed project.

#### F. Project Audit

The Commission has the right to conduct any necessary audit, verification, and discovery during project implementation/construction to ensure that CASF funds are spent in accordance with Commission approval.

Race's invoices will be subject to a financial audit by the Commission at any time within three years of completion of the work.

#### G. Providing Voice Service

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Race will be required to adhere to all FCC requirements in regards to E-911 service and must provide equipment with battery backup.

#### H. Reporting

Race must submit quarterly progress reports on the status of the project irrespective of whether Race requests reimbursement or payment.

Quarterly progress reports are due on January 1, April 1, July 1, and October 1. Progress reports shall use the schedule for deployment, major construction milestones and costs submitted in the proposal; indicate the actual date of completion of each task/milestone as well as problems and issues encountered, and the actions taken to resolve these problems and issues during project implementation and construction; and identify future risks to the project. Race must certify that each progress report is true and correct under penalty of perjury.

Before full payment of the project, Race must submit a project completion report. Race shall also include test results on the download and upload speeds on a CBG and zip code basis in the final completion report.

#### I. Submission of Form 477

The FCC currently requires broadband providers to biannually submit Form 477, which includes speed data. While there is an imperfect match between the data that is reported in Form 477 and to the CASF, the Form 477 data will be useful in documenting CASF deployment for the service provider's new service. Pursuant to General Order 66-C, service providers in California must submit a copy of their Form 477 data directly to the CPUC, concurrent with their submission of the same data to the FCC. CASF recipients must continue to submit their Form 477 data for a five-year period after completion of the project.

#### J. Prevailing Wage

Section 1720 of the California Labor Code specifies that CASF-subsidized projects are subject to prevailing wage requirements. Race has committed to follow state prevailing wage requirements with regards to this project.

#### K. Payments to CASF Recipients

Submission of invoices from and payments to Race shall be made at a minimum of 25-percent completion intervals, in accordance with Section XI of Appendix 1 of D.12-02-

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015 and according to the guidelines and supporting documentation required in D.12-02-015.

Payment to Race shall follow the process adopted for funds created under Pub. Util. Code, § 270. The Commission generally processes payments within 20-25 business days, including CD and Administrative Services review time. The State Controller's Office (SCO) requires an additional 14-21 days to issue payment from the day that requests are received by SCO from Administrative Services.

## **VI. Comments on Draft Resolution**

In compliance with Public Utilities Code § 311(g), a notice letter was e-mailed on April 7, 2017, informing all parties on the CASF Distribution List of the availability of the draft of this resolution for public comments at the Commission's website at <http://www.cpuc.ca.gov/documents/>. This letter also informed parties that the final conformed Resolution adopted by the Commission will be posted and available at this same website.

Again, in compliance with Pub. Util. Code, § 311(g), a notice letter was e-mailed on May 30, 2017, informing all parties on the CASF Distribution List that this draft resolution was re-posted due to changes in the proposed number of households and other procedural concerns. This letter also informed parties of the draft of this resolution for public comment at the Commission's website at <http://www.cpuc.ca.gov/PUC/documents/> and that the final conformed Resolution adopted by the Commission will be posted and available at this same website.

CD received one formal comment on the draft resolution and two reply comments during the initial public comment period. During the second comment period, CD received two formal comments and two reply comments.

### **A. Initial Comment Period**

On May 1, 2017, *Frontier Communications* (Frontier) submitted comments urging the Commission to reject the draft resolution, based on the fact that it is constructing broadband infrastructure to serve 5,000 households in the Phelan area.<sup>20</sup> Frontier stated that:

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<sup>20</sup> On April 24, 2017, Frontier had attempted to challenge the Gigafy Phelan Project based on the planned construction mentioned here. CD rejected the challenge based on timeliness issues and the fact that it did not meet the standards of D.12-02-015, which requires areas to be "already served" in order to be challenged.

1. Awarding a grant for Phelan would be inconsistent with Commission Decision (D.) 15-12-005, which required Frontier to expand broadband services in underserved areas as a condition of its acquisition of Verizon California's service territory, an effort for which Frontier plans to use Connect America Fund Phase II (CAF II) monies;
2. The award of the grant would not comply with the Legislature's "policy" that California should leverage and maximize the state's draw of federal broadband funds – in effect forcing California ratepayers to pay more than once for upgrades to the same area; and,
3. The Commission's grant evaluation policy is outdated and does not proactively consider the efforts of the Connect America Fund.

CD's responses are as follows:

1. D.15-12-005 does not specify in which areas Frontier is required to upgrade service, nor does it preclude Frontier from completing its CAF II obligations to build in Phelan. Further, D.15-12-005 did not include reconsideration of CASF rules nor did it examine how Frontier's prospective broadband expansion efforts would interact with current or future CASF program applications. Moreover, the Race application for Phelan predates the issue date of D.15-12-005 by almost four months.
2. CD leverages Federal and other outside funding wherever possible and practical, but did not consider CAF II awards during its analytical process because such projects are only required to meet a speed standard of 10/1, which would be "underserved" by Commission rules. CD also notes that part of Frontier's argument on this point is based on Assembly Bill (AB) 1665, which would, if enacted, lower the CASF upload speed standard to 1 mbps. AB 1665, however, is pending legislation and until enacted, it cannot be relied upon, nor does it carry any weight. Therefore, Frontier's claim lacks merit.

Moreover, while Frontier argues that the Phelan project results in California ratepayers to pay more than once for upgrades to the same area, staff's investigation shows Frontier's stance in this case is inconsistent with Frontier's practice of accepting CAF II funding for areas where CASF funding had already been awarded, such as Petrolia, an area where Frontier also accepted CASF

funding in Resolution T-17484 (July 23, 2015). Around the same time, Frontier additionally accepted CAF II funding for: the Yurok reservation in Humboldt County (which was awarded a CASF grant as part of the Klamath River Rural Broadband Initiative on October 17, 2013 – Resolution T-17418); areas in Placer County covered by Foresthill’s recently completed “Big Dipper” Project (Resolution T-17409, awarded October 3, 2013); and areas covered by the Anza Rural Electrical Cooperative’s “Connect Anza” project (T-17503, awarded December 21, 2015), which is nearing completion. If Frontier builds and collects CAF II monies for these CASF approved project areas, then ratepayers pay more than once for upgrades to the same area.

3. CD’s analysis of this resolution followed existing standards established in D.12-02-015 and reaffirmed in D.14-02-018 to “support deployment of broadband infrastructure projects offering high-quality advanced communications services that will promote economic growth, job creation, and substantial social benefits.”<sup>21</sup> Staff’s analysis indicated that Race’s deployment of modern fiber, capable of gigabit speeds up to 100 times faster than Frontier’s planned deployment of DSL, meets those standards. CD is following existing CASF rules established in D.12-02-015 and D.14-02-018 and neither precludes awarding CASF grants in CAF II areas.

In reply comments, on May 5, 2017, *Race* alleged Frontier’s comments contained several legal misrepresentations of fact that lead Frontier’s action to be “anti-competitive, monopolistic, unreasonable, and will cause further delay”<sup>22</sup> of its project. Race’s claimed in its comments that:

1. Frontier’s comments do not meet the rules of the CASF program, which require that challengers already serve an area;
2. Frontier did not file a timely challenge;
3. Frontier’s letter stated its intent was to build to a portion of homes, instead of the full area that Race is proposing to cover;
4. Frontier did not state it is providing minimum CASF-required broadband speeds in the areas it plans to upgrade;

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<sup>21</sup> D.14-02-018 Summary, page 1.

<sup>22</sup> Race reply comments, page 2, paragraph 2.

5. Granting Frontier's request to reject the resolution would amount to legal error that would discourage CLECs and wireless carriers from applying for CASF grants, thereby leading to less competition and less innovation, and ultimately penalizing California residents.

CD concurs with points 1-3 of Race's reply comments, does not concur with point 4 (Frontier stated after the initial comment period that it could adjust its service to provide "served" speeds in the area it plans to upgrade) and declines comment on point 5 as it addresses a policy concern outside of staff's purview.

Also filing a reply comment on May 5, 2017 was *Tellus Venture Associates* (TVA), a consultancy serving municipalities, regional broadband consortia, and other broadband related organizations in California. TVA stated it had no financial interest in this grant and does not have any client relationship with either Frontier or Race.

TVA contends Frontier's comments included factual error when it gave the impression that "current California law and policy prohibit the award of California Advanced Services Fund infrastructure grants in areas where the Federal Communications Commission has authorized subsidies from its Connect America Fund program." TVA contends the supposition is untrue, particularly where Frontier cites the discussion of AB 1665 in committee.

TVA also addressed the fact that Frontier accepted both CASF and CAF II money in Petrolia and notes that Frontier's proposed build would still leave more than 40 percent of households in the Phelan area without broadband service.

CD concurs with all of TVA's points.

#### B. Second Comment Period

After the initial public comment period, this draft resolution was held and reissued on May 30, 2017, due to changes in the resolution brought on because of staff's discovery that Race had used housing units in its budget and other procedural issues. A new comment period began, with comments due on June 19, 2017. Two comments were submitted, with Frontier again submitting comments and the Office of Ratepayer Advocates (ORA) also submitting comments.

*Frontier's* second set of comments stated the following:

1. Frontier's challenge demonstrates that at least 85 percent of households in the Race project area will have broadband at "served" speeds by August 2017.



2. The financial viability analysis is factually inaccurate and inconsistent with the universal service policy of CAF funds the Commission ordered Frontier to accept. Frontier adds that it is not possible for both Race (68 percent) and Frontier (70 percent) to achieve their stated take rates if both projects are built and contends that the award of funds to Race is at odds with D.15-12-005 requiring Frontier to accept CAF II funds and would result in an “overbuild” of the area.
3. The newly discovered error in the Race application leaves many unanswered questions about the actual number of households in the grant, the deduction to correct the error, and confusing business customer costs. Frontier also argued that CD’s explanation as to why the per-household deduction of \$1,856 is different than the \$3,417 per household estimate in the update draft resolution was “confusing.”
4. Significant due process issues are presented by the Commission and staff procedures related to this application. Frontier specifically claims a.) Race CEO Raul Alcaraz was allowed to speak at the May 11 Commission meeting and the comments were issued to the service list; b.) The draft resolution’s summary of “informal” comments should be deleted because they were filed after the comment period or reflect a process where staff apparently selects “some but not all” comments and puts them into a resolution; and c.) The draft resolution fails to cite any CASF rules for when modification of an application triggers a new challenge window and for when an application can be put “on hold” to allow a challenger to complete a broadband upgrade.

CD’s responses are as follows:

1. CD stipulates that Frontier is upgrading in the Phelan project area. Frontier has provided engineering documents to CD staff and has claimed that it will provide slower speed DSL upgrade to fewer, 6,376 households<sup>23</sup> by August 2017. CASF rules, however, require service to be in existence. Moreover, CASF rules require challenge within 14 days.
2. CD concurs that it is unlikely that both Frontier and Race will achieve the estimated “take rates” if both Frontier and Race build service in the area. CD believes, however, that Race’s take rate may be more accurate in this case because its significantly higher speeds and lower cost per megabyte as compared to Frontier’s slower DSL upgrade offering. If there is a conflict with using CASF and CAF II funds in the same area, Frontier has only exacerbated such a conflict

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<sup>23</sup>CD staff derived this number based on 2017 Census estimate.

by accepting CAF II funds in at least four areas where CASF projects were previously granted, as noted in CD's response to Frontier's initial comments.

3. Race, as noted, submitted housing units, instead of households, in its application. This is a common error in CASF applications, and usually staff corrects it prior to the resolution being published. Most applicants still consider those unoccupied units as potential customers.<sup>24</sup>

As noted in the resolution, Staff determined the \$1,856 marginal per household cost by adding line items in the application budget for customer premise equipment, labor costs associated with direct connections to the home, and other per unit items costs. The cost per household figures in the resolution, by contrast, is derived from total grant divided by total households to be served. This figure included shared costs such as, backhaul, the wiring of neighborhoods, environmental and permits costs, etc.

4. CD disagrees with Frontier's "due process" concerns because a.) Alcaraz's comments were distributed to the service list in order to ensure the transparency of the process – including as a notification to Frontier; b.) Support letters are routinely listed in CASF applications and CD noted the receipt of every support letter received by its staff during the comment period. CD does not see any case where ignoring the existence of public comment is beneficial to ratepayers, but has adjusted this resolution to simply state they were received rather than quoting from them; and c.) CD's reopening of the challenge window was done in the interest of transparency because staff thought that revision to the original application was considered significant.

Frontier's supposition that "the resolution fails to cite any CASF rules for ... when an application can be put 'on hold' to allow a challenger to complete a broadband upgrade" lacks merit because the resolution is consistent with the CASF rules which allows 14 days to challenge a proposed project and any party that challenges a proposed area or CBG as already served must provide documentation of that area or CBG is in fact already served. Frontier did not comply with these rules.

In its comments, ORA stated:

1. The Commission should consider broadband deployment resulting from CAF II funding and commitments made in D.15-12-005.

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<sup>24</sup> See T-17424 (December 19, 2013) as an example.

2. The Commission should remove households from the proposed project that will be served by Frontier as a result of CAF II funding and commitments pursuant to D.15-12-005.
3. The Commission should consider the impact on the proposed project's take rate due to broadband deployment resulting from CAF II in the proposed project area.

CD's responses are as follows:

1. CD considers Federal and other outside funding wherever possible and practical, but did not consider CAF II awards during its analysis because such projects are only required to meet a speed standard of 10/1, which would be "underserved" by Commission rules. CASF rules do not prohibit warding of CASF grant in CAF II areas.
2. Removing those households at this time would be inconsistent with the rules outlined in D.14-02-018, which requires staff to determine that service is already in place before removal.
3. As explained in CD's response to Frontier's comments, CD concurs that it is unlikely that both Frontier and Race will achieve the estimated "take rates" if both Frontier and Race build service in the area. CD believes, however, that Race's take rate may be more accurate in this case because its significantly higher speeds and lower cost per megabyte as compared to Frontier's slower DSL upgrade offering. An analysis of Race's fiscal projections show the company takes into account a low take rate in the early years, which tends to improve over time. Therefore, CD's analysis indicates that Race can weather a lower take rate and still have a viable project.

In its second set of reply comments, *Race* contended factual error on Frontier's part when it claimed that its CAF II build, as ordered in D.15-12-005, should preempt Race's application for the project area. Specifically, Race:

1. Requested that Ordering Paragraph 16 of D.15-12-005 be recognized. That paragraph states: "Nothing in this decision shall prevent the Commission from ordering Frontier Communications Corporation (Frontier) to take actions inconsistent with its commitments in the Settlements or the Memoranda of Understanding (MOU). Any inconsistency between a Commission order and any term of any Settlement or MOU shall be resolved in favor of the Commission order. *Frontier may not use any term of any Settlement or MOU as a defense against any future Commission order*" (emphasis added by Race).

2. Contended factual errors existed in Frontier's contention that its planned service should preempt the Commission from awarding Race a CASF grant.
3. Claimed that Frontier erred in arguing that its late challenge should be accepted and that it would be "outrageous, unfair, and inconsistent with the Commission's own CASF rules to penalize Race for Frontier's ineptitude in following the Commission's published challenge rules."

CD's responses are as follows:

1. D.15-12-005 does not specify in which areas Frontier is required to upgrade service, nor does it preclude Frontier from completing its CAF II obligations to build in Phelan.
2. CD concurs and believes allowing Frontier's planned service to preempt Race's application would be inconsistent with the process outlined in D.14-02-018, which requires staff to determine that service already be in place prior to declaring an area ineligible for CASF funding.
3. CD concurs, as noted in the prior paragraph.

*Frontier* also submitted reply comments, summarized as follows:

1. Frontier stated that award of this grant would set a "nationwide precedent" on use of State broadband funds to overbuild CAF-Funded infrastructure and will create a "1 Gig Divide" using customer surcharges. Frontier agreed with ORA's position that the Commission should remove households to be served by Frontier from the project, but "key facts in ORA's comments need clarification." Frontier then proposed alternatives to the use of the CASF monies in the Phelan area, such as saving it for a more "cost-effective" program elsewhere.
2. Frontier noted that ORA's comments "correctly pointed out" that D.15-12-005 included a settlement agreements with "consumer advocates" (such as ORA, The Utility Reform Network, and the Center for Accessible Technology), but did not mention that Frontier also settled with other groups such as the California Emerging Technology Fund (CETF). Frontier further stated that the draft resolution committed "egregious" error by not addressing these agreements Frontier made with such advocacy organizations.
3. Frontier noted that ORA's comments "correctly observed" that D.15-12-005 requires Frontier to update the Commission on the progress of its broadband upgrades but ORA did not mention Frontier's settlement with the CETF, which

required Frontier to provide CETF with a confidential “framework for all deployment ordered by the CPUC.”

4. Informal comments are based on 2014 facts and urge a policy that would create a “1 Gig Divide” that would leave many communities unserved.
5. No other state where Frontier accepted CAF funds is awarding State funds to overbuild and “undermine” CAF-funded broadband deployment.

CD’s responses are as follows:

1. CASF rules require service to already be in existence.
2. D.15-12-005 does not specify in which areas Frontier is required to upgrade service, nor does it preclude Frontier from completing its CAF II obligations to build in Phelan.
3. Same response as above.
4. Informal comments are included with this resolution only for the completeness of the record. Informal comments were not considered in staff’s analysis. In this revised resolution, only their existence, not their content, is acknowledged.
5. CD has not have the opportunity to conduct research regarding whether other state where Frontier accepted CAF fund is awarding State funds to overbuild and “undermine” CAF-funded broadband deployment..

C. Informal comments/support letters

During the comment periods, several informal comments, (*i.e.*, not properly served to all parties on the CASF service list) were received as well. A list of letter writers is presented below for the completeness of the record:

- |   |   |
|---|---|
| • Academy for Grassroots Organizations          | • High Desert Community Foundation              |
| • Assemblyman Tom Lackey                        | • Inland Empire Economic Partnership            |
| • California Telehealth Network                 | • Inland Empire Regional Broadband Consortium   |
| • California State University at San Bernardino | • Mojave Desert Air Quality Management District |
| • City of Hesperia                              | • Newberry Springs Community Alliance           |
| • Congressman Paul Cook                         |   |
| • California Department of Forestry             |   |

- News Plus publisher Don Fish
- Phelan Chamber of Commerce
- Phelan Piñon Hills Community Services District
- San Bernardino Associated Governments
- San Bernardino County Supervisor Robert Lovingood
- Snowline Joint Unified School District
- State Senator Scott Wilk
- Victor Valley College
- An additional 38 private citizens.

After examining the comments and reply comments, CD maintains its recommendation that the Gigafy Phelan project be funded as outlined in this resolution.

## **VII. Findings**

1. Race filed an application for CASF funding for its Gigafy Phelan Project on August 10, 2015. Race subsequently modified its application multiple times in response to staff requests and on its own initiative. The proposed project, as amended and outlined in this resolution, would install a fiber-to-the-premise system capable of symmetrical 1 gigabit-per-second download/upload service to 7,606 households in western San Bernardino County. This system would provide broadband Internet access to an area that is currently unserved and/or underserved by both landlines and wireless providers. The CBGs impacted by the project are outlined in Appendix A.
2. CD posted the proposed project area map, CBGs and zip codes by county for the Race Gigafy Phelan Project on the Commission's CASF webpage under "CASF Application Project Summaries" on August 10, 2015, and again on September 26, 2016. CD one challenge to this project, from Charter Communications.
3. Following review of the Charter Challenge, CD declared 360 census blocks ineligible for CASF grants, and Race revised its application accordingly to remove the challenged blocks.
4. CD reviewed and analyzed data submitted for the Gigafy Phelan Project's CASF grant application to determine the project's eligibility for CASF funding. This data included, but was not limited to: proof of a CPCN from the Commission; descriptions of current and proposed broadband infrastructure; geographic information system (GIS) formatted shapefiles mapping the project areas; assertion that the area is underserved; number of potential subscriber households and median household incomes; project construction schedule; project budget; proposed pricing and commitment period for new subscribers; and financial viability of the applicant.

5. CD reviewed the submitted shapefiles, which mapped the proposed broadband deployment using United States Census data and the most-current California Broadband Availability Maps at the time of application. These maps helped to verify the availability and speed of any broadband service, where available. The project area was determined to be underserved by mobile, fixed wireless, and wired service.
6. Based on CD's review, CD determined that Race's project qualifies for funding under D.12-02-015 and recommends Commission approval of CASF funding for the Gigafy Phelan Project.
7. Race is not required to post a performance bond because it is a CPCN holder and its share of total costs will come from a dedicated capital budget.
8. Race is required to comply with all guidelines, requirements, and conditions associated with the granting of CASF funds as specified in D.12-02-015, D.14-02-018, Resolution T-17443, and this Resolution, and with all applicable laws, including the State's prevailing wage requirements. Race must also submit the FCC Form 477, as specified in Resolution T-17143.
9. The Commission finds CD's recommendation to fund the Gigafy Phelan project, as summarized in Appendix A and mapped in Appendix B, to be reasonable.
10. Notice letters were e-mailed on April 7, 2017 and May 30, 2017, informing all parties on the CASF Distribution List of the availability of this draft Resolution for public comments at the Commission's website <http://www.cpuc.ca.gov/documents/>. These letters also informed parties that the final confirmed Resolution adopted by the Commission will be posted and available at this same website.

**THEREFORE, IT IS ORDERED that:**

1. The Commission shall award a grant of up to \$27,629,599 to Race Telecommunication, Inc., for its Gigafy Phelan Project in San Bernardino County as described herein and summarized in Appendix A of this Resolution.
2. Grant payments for this project serving underserved areas shall be paid out of the CASF Infrastructure Grant Account in accordance with the guidelines adopted in D.12-02-015 and D.14-02-018.

3. Race shall provide service to all residential properties within the project area, as defined in Appendix B and GIS files submitted to the Communications Division as part of the application process.
4. Payments to the CASF recipient shall be in accordance with Section XI of Appendix 1 of D.12-02-015 and Section XI of Appendix 2 of D.14-02-018, and in accordance with the process defined in the "Payments to CASF Recipients" section of this Resolution.
5. Race shall comply with all guidelines, requirements and conditions associated with the CASF funds award as specified in D.12-02-015, D.14-02-018, and this resolution and must submit a copy of FCC Form 477 to the Commission, as specified in Resolution T-17143.
6. Race must complete all construction covered by the grant on or before the grant's termination date. If the project will not be completed within the 24-month timeframe, Race must notify the Director of CD as soon as it becomes aware of this possibility. If such notice is not provided, the Commission may reduce payment for failure to satisfy this requirement.
7. If Race fails to complete the project in accordance with the terms outlined in D.14-02-018 and with the terms of the Commission's approval, as set forth in this Resolution, Race must reimburse some or all of the CASF funds that it has received.
8. Race must sign and return a consent form agreeing to the conditions set forth in this resolution.
9. Race must submit a project completion report for the prior to receiving final payment.



This Resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on June 29, 2017. The following Commissioners approved it:

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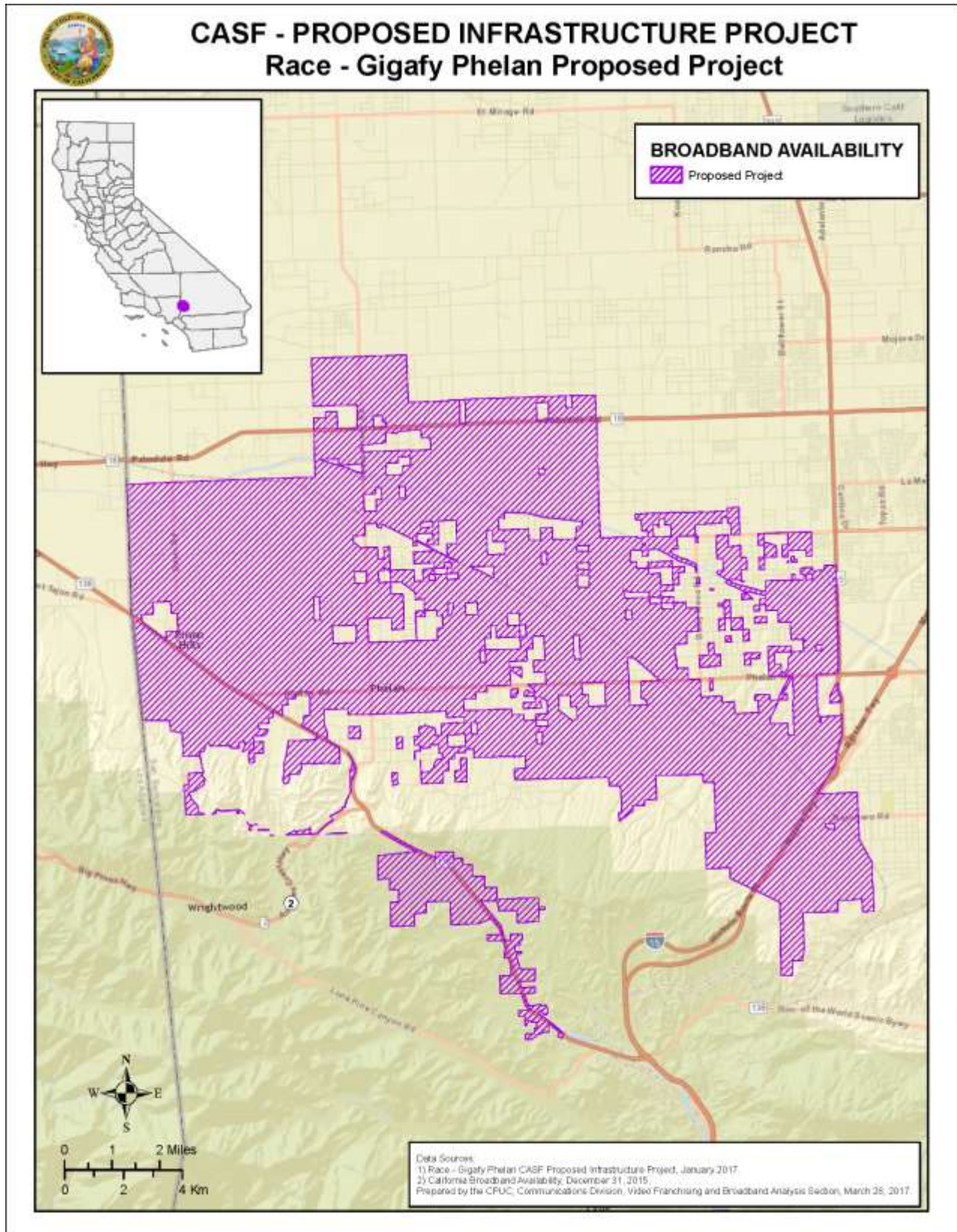
TIMOTHY J. SULLIVAN  
Executive Director

## APPENDIX

**APPENDIX A**  
**Resolution T-17525 Race Gigafy Phelan**  
**Key Information**

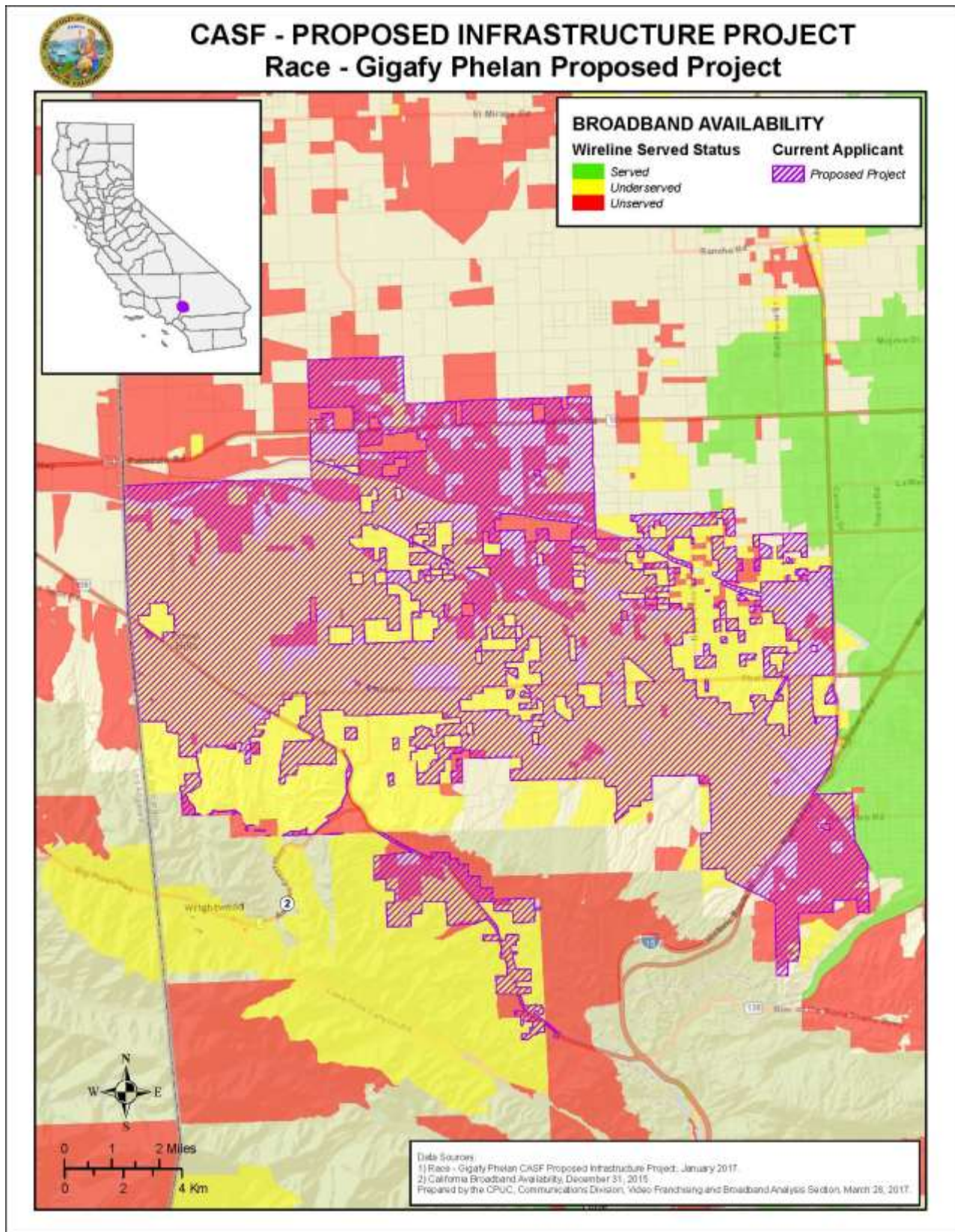
<i>Project Name</i>	<b>Gigafy Phelan Project</b>
<i>Project Size (in square miles)</i>	98
<i>Download/Upload speed</i>	Up to 1 Gbps / 1 Gbps
<i>Location</i>	Southwest San Bernardino County
<i>Community Names</i>	Phelan, Piñon Hills, Oak Hills, and Hesperia
<i>Census Block Groups</i>	<div>060379110012      060710091092</div> <div>060710091083      060710091094</div> <div>060710091082      060710100091</div> <div>060710092021      060710091091</div> <div>060710100173      060710091171</div> <div>060710100172      060710091081</div> <div>060710091071      060710091192</div> <div>060710100171      060710091191</div> <div>060710091073      060710091193</div> <div>060710091072      060710091183</div> <div>060710091093      060710092012</div>
<i>Median Household Income (weighted)</i>	\$52,951
<i>Zip Codes</i>	92344, 92371, 92371, 92392, 93501, 93512, 93514, 93517, 93528, 93530, 93541, 93544, 93545, 93549, 93554, 93558, 93562, 93592
<i>Estimated potential subscriber size</i>	8,361 (2010 US Census housing unit est.)
<i>Households in area</i>	7,606 (2017 CA Dept. of Finance estimate)
<i>Applicant expectations</i>	5,685 customers (68-percent take rate)
<i>Deployment Schedule (from permit approval date)</i>	24 Months
<i>Eligible Proposed Project Budget (Total)</i>	\$46,049,332
<i>Amount of CASF grant funds requested (60%)</i>	\$27,629,599
<i>Applicant funded (40%)</i>	\$18,419,733
<i>Grant per household passed</i>	\$3,633

**Appendix B**  
**Resolution T-17525, Race Gigafy Phelan Project — location map**





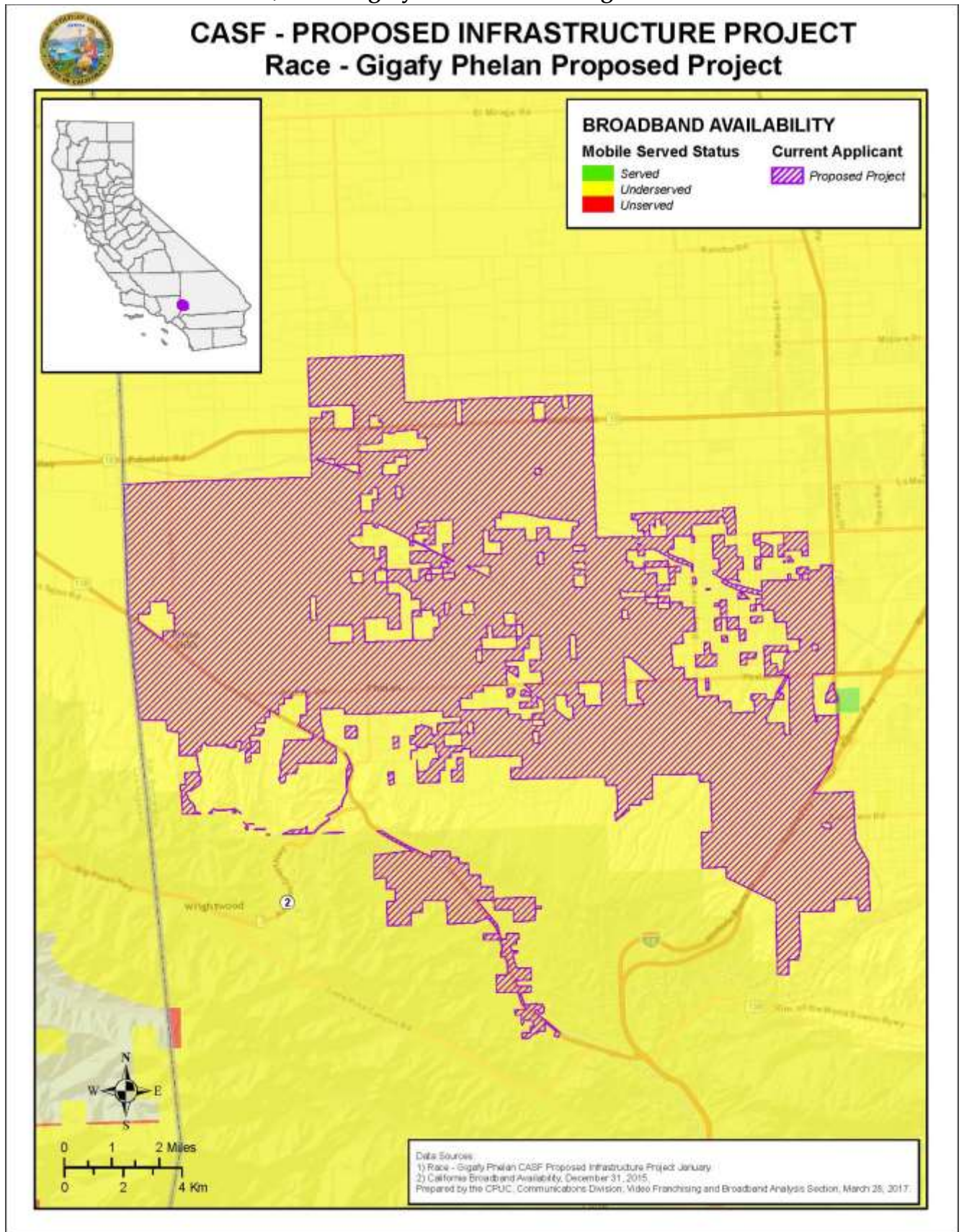
**Resolution T-17525, Race Gigafy Phelan – Existing wired service level**





## Appendix D

Resolution T-17525, Race Gigafy Phelan — Existing mobile service level





## Appendix E

### Resolution T-17525, Race Gigafy Phelan — Fixed wireless service level

