From:	Roberts, Brian (TIS)
To:	CA Broadband Council
Subject:	City and County of San Francisco Comments on Broadband Action Plan
Date:	Friday, November 20, 2020 11:44:03 AM
Attachments:	image001.png CCSF CA Broadband Action Plan Comments DT Final.pdf 10-27-20 CCSF Reply Comments R20-09-001.pdf
Importance:	High

Dear California Broadband Council, please see attached comments on the Broadband Action Plan.

Sincerely,
Brian

SAN FRANCISCO
DEPARTMENT OF
TECHNOLOGY

Brian Roberts
Policy Analyst
[redacted]

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President, National Assoc. of
Telecommunications Officers and Advisors
(NATOA)

SAN FRANCISCO
DEPARTMENT OF
TECHNOLOGY

California Broadband Council
1325 J Street Suite 1600
Sacramento, CA 95814-2941

Subject: State Broadband Action Plan

Dear California Broadband Council:

The City and County of San Francisco ("CCSF") is writing to support the California Broadband Council ("CBC") in its effort to create a new State Broadband Action Plan in response to the Governor's Executive Order N-73-20 issued on August 14, 2020. We are taking this opportunity to stress certain critical points the CBC must take into consideration as it charts California's broadband future. CCSF has participated in the listening sessions on October 1 and October 29 and submitted reply comments in the California Public Utilities Commission's (CPUC's) proceeding in response to the Executive Order. (We have attached these reply comments.) We very much appreciate the multiple opportunities to comment given the time constraints faced by the CBC.

In 2019, San Francisco Mayor London Breed said "Providing low-income families with access to high-speed internet is about equity, and ensuring every family in our City has access to the resources they need to pay their bills, connect with City services, or do their homework". That statement is even more true today, as the Covid-19 pandemic requires Californians to rely on digital connections for all aspects of their daily life. We urge the CBC to keep the following goals in mind as it finalizes its plan:

- Governor Newsom correctly set forth a forward-looking goal of 100 megabits per second downstream goal for broadband to all Californians. The requirements of two-way video communication for all aspects that upstream capacity is equally important to consider a rigorous minimum upstream speed. Ambitious minimum speed goals should apply to all services, including broadband service for low income and rural residents.

- Affordable broadband for low-income consumers is essential to achieve equity in education, employment, access to healthcare and civic engagement. A robust Lifeline program that supports high quality broadband is necessary to make this happen.

- Local public efforts to expand broadband can be a critical tool for closing the digital divide, so we recommend that barriers to public participation and creative public private partnerships be removed. San Francisco's effort to bring high speed broadband to affordable housing residents could be accelerated by re-opening the California Advanced Services Fund (CASF) Public

Housing Program. Similarly, rural communities would benefit by reducing the restrictions and complexity of the (CASF) Broadband Infrastructure Account.

- Better data about the availability, price and quality of broadband connectivity throughout the state is necessary to make informed decisions about where to invest to address gaps. Current data overstates the availability, quality and choice of provider for broadband in urban areas.

- Standards for robust inside wiring for multi-family housing are essential to ensure that residents can enjoy the benefits of broadband infrastructure. Infrastructure in the public right of way is only capable of delivering service to residents to the extent that inside wiring is adequate. As part of San Francisco's affordable housing broadband program we are in the process of creating guidelines for affordable housing developers to ensure that high speed broadband can reach residents.

- To improve digital literacy among Californians impacted by the digital divide, the state should expand funding to support a wide range of digital literacy training in ways that are both highly accessible and relevant for our residents. Digital literacy is a crucial driver of broadband adoption and bridging the digital divide in the long term.

- We urge the state to prioritize Internet access and training support for seniors and people with disabilities. As a COVID-19 high-risk group, seniors have experienced during the pandemic significant increases in social isolation and loneliness, which are linked to greater risk for many physical and mental health conditions.

- Special attention should be given to connectivity at nursing homes and assisted living facilities, many of which have imposed restrictions on visitors and group activities in response to COVID-19, leading to reports of increased isolation and loneliness among residents).

CCSF would like to thank the CBC for the opportunity to contribute to the development of the new state broadband plan. We look forward to working with the CBC as it seeks to bring robust, affordable broadband internet to all Californians.

Sincerely,

Linda Gerull

Linda J. Gerull
City CIO
Executive Director | Department of Technology
City and County of San Francisco

[redacted]

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding Broadband Infrastructure Deployment and to Support Service Providers in the State of California.	R.20-09-001 (Filed September 10, 2020)

REPLY COMMENTS OF THE CITY AND COUNTY OF SAN FRANCISCO IN THE ORDER INSTITUTING RULEMAKING REGARDING BROADBAND INFRASTRUCTURE DEPLOYMENT AND TO SUPPORT SERVICE PROVIDERS IN THE STATE OF CALIFORNIA

Dated: October 27, 2020

DENNIS J. HERRERA
City Attorney
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I. INTRODUCTION

The City and County of San Francisco ("City" or "San Francisco") submits these reply comments on the Rulemaking opened by the California Public Utilities Commission ("Commission") on its own initiative to "set the strategic direction and changes necessary to expeditiously deploy reliable, fast, and affordable broadband internet access services that connect all Californians. [1] San Francisco supports the "core purpose" of this Rulemaking, which is to "accelerate the deployment of and access to quality, affordable internet for all Californians."[2]

San Francisco agrees with some of the other parties that filed opening comments in this proceeding. In particular, San Francisco agrees with the Public Advocates Office ("Cal Advocates"), and the Utility Reform Network and The Center for Accessible Technology (collectively "Joint Consumers") that the Commission should use this Rulemaking to rapidly respond to the Governor's directive in Executive Order N-73-20 and ensure that all Californians have access to affordable, reliable broadband service.[3] As Governor Newsom succinctly stated, "deploying affordable and reliable broadband networks throughout California will accelerate economic and workforce development, infrastructure, public safety, education, economy and an engaged citizenry."[4] This includes making sure low-income consumers in urban areas can obtain broadband internet access services. While most urban areas have those services available, many

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[1] Rulemaking at 1.

[2] Rulemaking at 1.

[3] *See* Cal Advocates comments at 1-2; Joint Consumers comments at 1-2.

[4] Executive Order N-73-20, p.1 (August 14, 2020).

Footnote continued on next page.

low-income consumers cannot afford the cost. As Governor Newsom confirmed: "[B]roadband access, adoption, and training are essential components of digital equity for California's diverse populations." [5]

San Francisco supports the Commission's adoption of this Rulemaking to work with interested parties to meet the Governor's goal of making broadband services available to all Californians.

II. SAN FRANCISCO'S RESPONSES TO THE COMMISSION'S QUESTIONS

A. Infrastructure Deployment Models and Strategies.

1. What business models could the California energy Investor-Owned Utilities (IOUs) employ to make their existing and future fiber infrastructure more available in rural, urban and Tribal areas? What are the critical requirements and incentives for these models to be effective?

As PG&E notes in its opening comments, PG&E owns an extensive communications network that it uses to support its delivery of electric and gas services.[6] PG&E, like all of the investor-owned utilities, owns and operates an extensive network of conduits and utility poles that serve its customers throughout the State.

San Francisco agrees with Cal Advocates and Joint Consumers that the Commission should explore ways to make these assets available to support the delivery of broadband services to underserved communities.[7] Particularly in urban areas, IOU-owned poles should be readily

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[5] *Id*.

[6] PG&E comments at 2.

[7] *See* Cal Advocates comments at 4-5; Joint Consumers comments at 5-6.

available to support Wi-Fi devices and antennas to provide wireless broadband services, and unused conduits could be used to deploy fiber networks or wireless backhaul. As Joint Consumers also point out, the Commission could identify existing infrastructure owned by IOUs, such as unused conduit and unused fiber, that cities and counties could use to reduce the cost of deploying a municipal fiber network.[8]

2. What strategies, incentives or standards can improve open access in deploying fiber and wireless infrastructure to be utilized by multiple carriers, particularly in rural and Tribal areas? Specifically, how can communication providers better share their assets and build planning e.g. points of presence, carrier hotels, trenches, conduit, towers, poles, etc.)?

San Francisco has long advocated for open access networks. San Francisco agrees with Joint Consumers that local governments could lead the way in developing open access networks.[9] In 2017, San Francisco developed a plan to deploy a municipal fiber network that would provide San Francisco consumers with access to more affordable gigabit Internet service from multiple providers, including subsidized service for low-income residents. While San Francisco has put plans for a citywide deployment on hold, the City has proceeded with a smaller scale deployment to serve affordable housing communities through its Fiber to Housing program, which offers free internet service to 5,000 households thus far. While the City has partnered with a single local internet service provider to deliver this service, the Fiber to Housing infrastructure would allow other internet service providers to offer services as well.

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[8] *See* Joint Consumers comments at 22.

[9] *See* Joint Consumers comments at 10.

Funding is the major barrier for expanding the program or deploying a citywide open access network at scale. Expansion of CASF Infrastructure grant eligibility to support local government projects like Fiber to Housing would be one strategy the Commission could adopt to promote open access infrastructure. The Commission should also consider allowing municipal providers to tap into LifeLine subsidies for their eligible consumers.

3. How can the Commission use its licensing, permitting and CEQA responsibilities to further the goals of this OIR? Are there areas of the CEQA process which can be streamlined while still meeting the statutory requirements?

San Francisco has no comments on this question at this time.

B. Economic Vitality and Recovery Strategies.

1. What requirements, if any, should the Commission impose on communications service providers and IOUs to facilitate the construction of fiber when restoring facilities after a disaster such as a fire?

San Francisco has no comments on this question at this time.

2. How can the Commission partner with other state agencies to effectively address the infrastructure and affordability gap for communications services in California? How can the Commission assist in the implementation of E.O. N-73-20, OP #7?

San Francisco agrees with Cal Advocates that the Commission should continue working with the California Department of Education ("CDE").[10] In May 2020, the Commission collaborated with CDE to distribute $5 million to address the distance learning needs of students and schools in response to the COVID-19 pandemic.[11]

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[10] *See* Cal Advocates comments at 11.

[11] *See* Resolution T-17697.

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CDE recently launched a Closing the Digital Divide Task Force.[12] The Task Force's goal is to identify "needed resources and partnerships to support distance learning in California schools and equip all California students with computing devices and connectivity." To support this goal, the Task Force is trying to raise $500 million in private funds for computers and hotspots.[13] CDE has also collaborated with major technology companies and internet service providers to make it easier for schools to acquire necessary equipment and services for their students.[14]

The Commission should continue to work with the CDE on these initiatives. It should also help CDE gather more data from schools and parents on their experiences with hotspots and internet access services to inform its infrastructure funding decisions in the future.

3. How should the Commission address access to existing infrastructure for those communities where there is infrastructure going through a community but they are not served by it?

The last-mile has always presented the barrier for closing the digital divide. The Commission should look to innovative ways to fund the deployment of this infrastructure.

A common last-mile barrier in urban areas is the lack of adequate inside wiring or access to inside wiring in multiple dwelling units that would allow internet service providers to deliver service to the residents of those properties. This is especially true for low-income residents living in older housing, such as single room occupancy hotels. Without adequate inside wiring, infrastructure in the public right-of-way does not benefit residents of these types of housing. The

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[12] *See* https://www.cde.ca.gov/eo/in/digitaldivide.asp

[13] *See* https://www.cde.ca.gov/nr/ne/yr20/yr20rel51.asp

[14] *See* https://www.cde.ca.gov/eo/in/techdevices.asp

Commission should consider establishing standards for open access wiring and look for ways to provide funding for building owners to upgrade their inside wiring.

San Francisco also agrees with the Electronic Frontier Foundation's suggestion for a statewide policy similar to that adopted by San Francisco in Article 52 of the San Francisco Police Code entitled "Occupant's Right to Choose Communications Services Provider."[15] Under this ordinance, property owners may not restrict the right of building occupants to choose a provider of advanced telecommunications services. Obtaining access to new customers is a major barrier to new internet service providers entering the market.[16]

4. How should the Commission consider the role of communications in serving all households in a community and concerns about digital redlining?

In 2019, San Francisco Mayor London Breed stated: "Providing low-income families with access to high-speed internet is about equity, and ensuring every family in our City has access to the resources they need to pay their bills, connect with City services, or do their homework"[17] That statement is even more true today. The Covid-19 pandemic has demonstrated that broadband access is essential for education, employment and telehealth.

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[15] *See* Electronic Frontier Foundation comments 18.

[16] *See* Sean Buckley, *Sonic says access to MDUs is critical to expanding its FTTH service footprint* (June 29, 2017), available at https://www.fiercetelecom.com/telecom/sonic-says-access-to-mdus-critical-to-expanding-its-ftth-service-footprint

[17] *See San Francisco "Fiber to Housing" Program Providers Internet for Low-Income Families*, available at https://sf.gov/news/san-francisco-fiber-housing-program-provides-internet-low-income-families-0

Footnote continued on next page.

All communities, and all the households within them, need modern communications services. As Governor Newsom ordered, this means service at least 100 Mbps.[18] San Francisco agrees with Joint Consumers that the Commission should gather more detailed data, including income levels, broadband characteristics like upload and download speeds, data caps, and prices, at more granular levels from all service providers and infrastructure owners to identify clear signs of digital redlining.[19] The Commission should also consider adopting anti-digital redlining regulations.

C. Strategies to Support Specific Communities and Uses.

1. What further strategies, if any, should the Commission utilize to facilitate broadband internet access service for low-income, high fire threat, and/or low adoption communities, primary school students and institutions, libraries, and public safety communications?

The Commission should not overlook the need for infrastructure funding to close the digital divide among low-income residents throughout the State. The need for broadband services is even more important now when Californians are increasingly relying on the internet to work, go to school, and receive medical care. To access these critical services, low-income consumers need low-cost access to robust internet service.

In San Francisco's experience, distance learning typically involves a combination of videoconferencing (on platforms like Zoom), collaborative projects and individual assignments (on

[18] *See* Executive Order N-73-20 (August 14, 2020).

[19] *See* Joint Consumers comments at 16-18.

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platforms like Google Classroom), and reading or video assignments.[20] Many teachers also offer tutoring sessions to help individual students over video calling. Telehealth requires access to online healthcare portals to send and receive secure messages to health care providers, attend virtual doctor's visits through videoconferencing, and possibly using connected health tracking devices.[21]

One strategy the Commission should consider for deploying shared fiber and wireless infrastructure in underserved urban areas is to change eligibility rules for use of the Broadband Public Housing Account funds so that cities like San Francisco would become eligible.[22] The Commission should also consider providing incentives for broadband providers to lease excess capacity to local governments who could use that capacity to deliver free/low cost service for underserved residents. San Francisco could use these funds, or this capacity, to expand deployment of its Fiber to Housing initiative.[23]

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[20] As the San Francisco Chronicle recently reported, distance learning has been a problem for low-income students due to lack of internet access. Even though the San Francisco United School District distributed 12,000 Chromebooks after closing the schools due to the pandemic, many low-income students sheltering in place do not have access to the wired broadband services that are necessary for distance learning. Miki Katoni and Nina Sparling, *Distance learning for some kids at SF elementary school came with an extra challenge: No internet connection*, available at https://www.sfchronicle.com/bayarea/article/Distance-learning-for-some-kids-at-SF-elementary-15353756.php?cmpid=gsa-sfgate-result

[21] For many low-income residents of mobile devices are the only way to obtain access to the internet. In survey conducted in 2019, the California Emerging Technology Fund found that 18% of California residents in the lowest income bracket and 12% of those residents in the second to lowest income bracket are smartphone-dependent for access. Survey results available at: http://www.cetfund.org/progress/annualsurvey

[22] Under present rules, these funds are only available for public housing that does not have any broadband service. While that is not the case in San Francisco, public housing residents in San Francisco often cannot afford the services available from AT&T and Comcast.

[23] *See* p. __, *supra*.

Finally, the Commission should consider revising its rules for use of the Commission's programs that provide broadband funding. For example, currently funds in the Commission's Broadband Adoption Account may only be used for basic digital literacy training and devices (tablets/computers). The Commission should consider changing the rules to allow those funds to be used to purchase internet service, which is the most common barrier to adoption.

The Commission should also explore expanding the LifeLine program to: (i) make it more attractive so more broadband service providers will participate; and (ii) streamline the eligibility and enrollment process. The Commission should also consider setting standards for internet services provided to LifeLine customers programs (customer service, bandwidth quality, and eligibility) with price targets for different services. This would enable LifeLine participants and eligible customers to make informed choices about the services available. In addition to addressing quality standards, San Francisco agrees with Cal Advocates that the Commission should consider including discounted retail broadband in the LifeLine program and improving outreach for the LifeLine Program.[24]

2. How should the Commission use the roughly $1 million in the Digital Divide Account to help schools and students?[25]

The need for improved digital access for educational purpose will not end when our schools reopen. In order to meet student needs both now and in the future schools need to upgrade their

[24] Cal Advocates comments at 15.

[25] Public Utilities Code Section 280.5.

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technology and teachers and students need robust internet access and modern digital devices at school and at home.

As Joint Consumers note, one million dollars is insufficient to meet the needs of the State's school districts.[26] With that said, San Francisco agrees with Cal Advocates that the Commission should consider using these funds to work with the California Department of Education to develop pilot projects to study how future funding for technology could best be used by schools.[27]

3. What are the strategies and models that Tribes can pursue for communications infrastructure and what are the means through which the Commission can support them?

San Francisco has no comments on this question at this time.

4. What are the strategies and models that public entities can pursue for communications infrastructure and what are the means through which the Commission can support them?

San Francisco fully supports providing cities and counties with the opportunity to deploy municipal broadband networks. Such networks could provide local residents and businesses with robust, affordable broadband service.[28]

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[26] *See* Joint Consumers comments at 20.

[27] *See* Cal Advocates comments at 20.

[28] See Gregory Thomas, *Can San Francisco realize the dream of public internet? The coronavirus pandemic has cast a spotlight on San Francisco's glaring digital divide. The question is: How do we close it?* (S.F. Chron, Aug. 9, 2020); available at: https://www.sfchronicle.com/culture/article/Can-San-Francisco-realize-the-dream-of-public-15464760.php

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As Joint Commenters have noted, a number of cities and counties in the United States have successfully deployed municipal broadband networks.[29] The Commission should explore in this proceeding how it could fund or otherwise support the development of municipal broadband networks.

III. THE COMMISSION SHOULD NOT USE THIS PROCEEDING AS A VEHICLE TO PREEMPT LOCAL AUTHORITY OVER BROADBAND DEPLOYMENT

In its opening comments, Crown Castle seems to suggest that local governments are the major impediment to broadband deployment. Crown Castle suggests that the Commission adopt a series of measures that would in essence preempt local authority over broadband deployment. These measures would include: (i) imposing a requirement that all permits be issued in 90 days or be deemed approved; (ii) establishing that all such permits are ministerial; (iii) prohibiting local governments from requiring undergrounding in areas with existing overhead infrastructure; (iv) requiring local governments to allow the use of new installation methods like microtrenching; (v) limiting local permit fees to cost recovery; (vi) limiting local governments to one permit per project; (vii) requiring local governments to develop clear "design standards" with limited authority over aesthetic concerns; and (ix) clarifying that the CPUC is the lead agency under CEQA for all broadband projects.[30]

For many years, telecommunications providers have sought to blame local governments for their inability to deploy adequate broadband. On many occasions, they have asked both federal and state agencies and courts to preempt local laws. These attempts have sometimes been successful,

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[29] See Joint Consumers comments at 23.

[30] *See* Crown Castle comments at 5-6.

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particularly at the federal level. In the last few years, the Federal Communications Commission has deferred to the providers and, relying on federal law, has broadly preempted state and local laws, particularly in the area of small cell deployment.[31]

State law, however, does not provide this Commission with the authority to grant Crown Castle its wish list of proposed Commission actions to preempt local authority. In fact, state law has expressly reserved to local governments the authority to regulate the use of the public right-of-way by telecommunications providers. As the California Supreme Court recently held, under Public Utilities Code § 7901[32] "the location and manner of [telephone] line installation are areas over which local governments traditionally exercise control."[33] The Supreme Court further found that, at least with respect to wireless facilities, this Commission's "default policy is one of deference to municipalities in matters concerning the design and location of wireless facilities."[34]

The Supreme Court has also considered local government authority of the construction of telecommunications facilities. In this regard, the Supreme Court found that Public Utilities Code

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[31] *See Accelerating Wireless Broadband Deployment,* Declaratory Ruling and Third Report and Order, 33 FCC Rcd. 9088 (2018); *Accelerating Wireline Broadband Deployment*, Third Report and Order and Declaratory Ruling, 33 FCC Rcd. 7705 (2018), *affirmed in part and reversed in part*, *City of Portland v. United States*, 969 F.3d 1020 (9th Cir. 2020).

[32] Under Public Utilities Code § 7901 a " telephone corporations may construct ... telephone lines along and upon any public road or highway, along or across any of the waters or lands within this State, and may erect poles, posts, piers, or abutments for supporting the insulators, wires, and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road or highway or interrupt the navigation of the waters."

[33] *T-Mobile West LLC. City and County of San Francisco* (2019) 6 Cal.5th 1107, 1121

[34] *Id*. at 1124.

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could not be clearer. Under section 7901.1[35], local governments may "control the time, place, and manner of temporary access to public roads during construction of equipment facilities."[36]

Crown Castle's concerns over local permit fees also ignores California law, which already limits permit fees for telecommunications facilities. Under Government Code section 50030, "[a]ny permit fee imposed by a city, including a chartered city, a county, or a city and county, for the placement, installation, repair, or upgrading of telecommunications facilities . . . shall not exceed the reasonable costs of providing the service for which the fee is charged. . . ."

Finally, Crown Castle already has remedies if local governments unduly delay issuing properly filed applications for permits to deploy broadband infrastructure. The Permit Streamlining Act establishes time limits for local governments to approve or deny permit applications.[37] If a permitting agency fails to meet the statutory deadline, under the Permit Streamlining Act the permit will be deemed granted.[38]

For these reasons, even if the Commission had intended this Rulemaking to address Crown Castle's concerns, which it clearly did not, the Commission simply does not have the authority to impose these types of requirements on local governments. In any event, Crown Castle has failed to

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[35] Under Public Utilities Code § 7901.1 "municipalities shall have the right to exercise reasonable control as to the time, place, and manner in which roads, highways, and waterways are accessed."

[36] *T-Mobile* West, 6 Cal.5th at 1127.

[37] Gov. Code, § 65921.

[38] Gov. Code, § 65956(b). The deemed approved permit confers the same rights and privileges on the permittee as would a regularly issued permit. *Ciania v. San Diego Trust & Savings Commission* (1991) 233 Cal. 3d 604, 1613.

show that local government permitting requirements are somehow the reason communications providers in California have failed to deploy the modern communications infrastructure that is necessary to meet the needs of all California residents—not just those who can afford to pay for state of the art broadband service.

IV. CONCLUSION

San Francisco appreciates the Commission's efforts to establish a forum for diverse parties to collaborate to ensure that all Californians have access to robust, affordable broadband service. San Francisco looks forward to working with the other parties to meet these goals.

Dated: October 27, 2020

Respectfully submitted,

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THERESA L. MUELLER
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