

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

Order Instituting Rulemaking Regarding Revisions
to the California Advanced Services Fund.

Rulemaking 20-08-021
(Filed August 27, 2020)

**OPENING COMMENTS OF THE GREENLINING INSTITUTE AND THE UTILITY
REFORM NETWORK ON THE STAFF PROPOSAL ON STATE-FEDERAL
BROADBAND INFRASTRUCTURE FUNDS LEVERAGING**

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I. INTRODUCTION

Pursuant to the October 1, 2020 ALJ Ruling, The Greenlining Institute (“Greenlining”) and The Utility Reform Network (“TURN”) respectfully submit these opening comments on the *Staff Proposal on State-Federal Broadband Infrastructure Funds Leveraging* (“Staff Proposal”). TURN and Greenlining generally support the Staff Proposal, and make recommendations to further the state’s goal of near-ubiquitous availability of broadband throughout California. ¹

II. DISCUSSION

Question 1. Background

(a) Should the Commission consider additional aspects, rationale, or interpretations of Public Utilities Code section 281 to facilitate CASF-RDOF leveraging?

TURN and Greenlining support the discussion of Public Utilities Code Section 281 set forth in the Staff Proposal and find that this discussion provides sufficient statutory support for the kicker fund proposal.² The Staff Proposal provides background and context for the revisions to Section 281 recently adopted by the Legislature through Assembly Bill (AB) 82 that will, “better enable the use of CASF to leverage RDOF dollars.” The Proposal notes that these revisions were supported by a round of comments submitted to the Commission earlier this year urging the Commission to leverage CASF funding with federal funding.³ In addition to the language within the four corners of Section 281 and Assembly Bill (AB) 82, TURN and Greenlining note that the timing of the legislation and the legislative history supports this interpretation and kicker fund process as set forth in the Staff Proposal. Additionally, as the Staff

¹ The numeration of the questions and answers in the document align with the numeration of the sections and questions as posed in the Staff Proposal. TURN and Greenlining note that any non-sequential numeration to align the responses to the question is intentional.

² All references to Sections are from the Public Utilities Code unless otherwise stated.

³ Staff Proposal at pp. 9-11.

Proposal notes, Section 270(c) and Section 281(f)(13) also direct the Commission to maximize federal funding and provide guidance on use of federal funding in connection with CASF grants.⁴ The Proposal notes that these provisions to maximize federal funding, along with the Proposal itself, support the goal of Section 281, “to approve funding for infrastructure projects that will provide broadband access to no less than 98 percent of California households in each consortia region.”⁵

On June 5, 2020, the Commission issued a letter to the May 4, 2020 CASF infrastructure applicants noting that the amount of requested funds was “more than three times the balance of the remain CASF funds.”⁶ The letter also described that it had mapped the proposed infrastructure projects to overlap with RDOF eligible census blocks.⁷ Therefore, at that time, the Commission likely already knew that “even if all 54 CASF infrastructure applications were awarded, the program would not meet the statutory goal of 98% served status within each multi-county consortia region.”⁸ The Staff Proposal suggests the Commission worked with the Legislature in developing AB 82.⁹ While the Senate and Assembly committee and floor analyses do not specifically mention the need to leverage federal funds to meet California’s deployment goals, the bill passed the Legislature and was signed by the Governor after the information

⁴ Staff Proposal at p. 12.

⁵ Staff Proposal at pp. 11-12.

⁶ Letter from Communications Director Robert Osborn to the CASF Distribution List and CASF Infrastructure Applicants Regarding the Availability of FCC RDOF Funding, dated June 5, 2020, at p. 1. See also, Staff Proposal at p. 9, 29 (Appendix 4).

⁷ Letter from Communications Director Robert Osborn to the CASF Distribution List and CASF Infrastructure Applicants Regarding the Availability of FCC RDOF Funding, dated June 5, 2020, at p. 2. See also, Staff Proposal at p. 30 (Appendix 4).

⁸ Staff Proposal at p. 9.

⁹ Staff Proposal at pp. 9-10.

regarding the finite amount of money in the Fund was known and available.¹⁰ As such, the legislative amendments to the CASF statute should be read as to empower the Commission to leverage federal funding, as necessary, to help meet the state’s deployment goals, which it may not have been able to do otherwise given the limited CASF funds available.

(b) Does the proposal accurately capture that state infrastructure awards before RDOF would likely disqualify or remove the state-funded location from the federal auction?

Yes, the Staff Proposal accurately describes the RDOF rule that state infrastructure funding granted prior to the federal auction would disqualify the census blocks in that state project from receiving RDOF funding.¹¹ The Commission’s postponement from deciding the May 4, 2020 infrastructure applications allows the census blocks for those proposed projects to remain eligible for RDOF, assuming those census blocks meet the RDOF requirements.¹²

(c) Should the proposal be modified to better conform with Public Utilities 281(f)(13), which states “This paragraph does not authorize the commission to reject a grant application on the basis that an applicant failed to seek project funding from the Connect America Fund program or another similar federal public program.”?

The Staff Proposal aligns with the requirements of Section 281(f)(13) because the Commission would not “reject a grant application on the basis that an applicant failed to seek project funding from ... [a] federal public program.” Instead, the Staff Proposal merely suspends the “deem denied” rule for applications that include RDOF eligible areas to allow those applicants

¹⁰ Office of the Senate Floor Analyses, Senate Rules Committee, Third Reading, AB 82 (dated June 25, 2020) retrieved from http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200AB82# (last viewed October 13, 2020); AB 82 Assembly Floor Analysis (dated June 25, 2020) retrieved from http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200AB82# (last viewed October 13, 2020)

¹¹ Staff Proposal at p. 9. See also, TURN Reply Comments on the March 26, 2020 ACR (R.12-10-012) at p. 5 (citing *In the Matter of Rural Digital Opportunity Fund*, FCC 20-5, WC Docket No. 19-126, Report and Order, rel. February 7, 2020, at para. 13, fn. 32).

¹² The FCC published its final list of eligible census blocks on October 8, 2020. FCC, FCC Releases Final List of Areas Eligible for Rural Digital Opportunity Fund Phase I Auction (dated October 8, 2020), retrieved from <https://docs.fcc.gov/public/attachments/DOC-367419A1.pdf> (last viewed October 13, 2020).

to apply for RDOF funds and to receive the determination regarding whether they will receive funds.¹³ Postponing the timeframe for deciding applications in order to “maximize the amount of federal funding to California participants in the federal programs” is not the same as denying an application.¹⁴

Moreover, the Staff Proposal states that CASF applications that include RDOF eligible areas but are not granted RDOF funding will still be considered “on a case by case” basis pursuant to the current CASF program rules, anticipating what will happen should the CASF applicant not receive RDOF funding for its CASF project area, whether the FCC awarded RDOF to another provider for that area or not.¹⁵ In such a case, the Commission would move forward with evaluating the CASF application by applying CASF infrastructure rules, and the “Commission *may* consider factors such as the technology proposed to be deployed by an RDOF winner and other factors” if appropriate.¹⁶ Therefore, the proposal is in compliance with Section 281(f)(13) because the Commission would not reject an application solely on the basis that an applicant did not apply, or fails to win, federal funding.

Question 2. Rationale for State-Federal Leveraging

(a) Do additional or other rationale for State-Federal leveraging apply?

There is a sense of urgency to deploy as much broadband throughout the state as quickly as possible due to the current COVID-19 pandemic. While TURN and Greenlining recognize it may be years before these RDOF and CASF proposed projects come to fruition, it may also be that distance learning, remote working, telehealth visits, and other broadband-intensive pandemic

¹³ Staff Proposal at p. 19 (proposing that CASF applications that overlap in RDOF eligible areas would have their “deemed denied” deadline extended by Executive Director letter from November 13, 2020 until after the FCC awards RDOF funding in the first quarter of 2021).

¹⁴ Section 270(c).

¹⁵ Staff Proposal at p. 21.

¹⁶ Staff Proposal at p. 21.

accommodations become more of the “new normal.” Therefore, because these pandemic accommodations have more clearly exposed the inequities in California broadband deployment policies, any current investments to address short term needs must also benefit all Californians far into the future. In response to this public health crisis, the Governor issued Executive Order N-73-20 on August 14, 2020, to facilitate the deployment of broadband infrastructure throughout the state.¹⁷ Leveraging CASF funds to encourage RDOF bids could increase the number of deployment projects and put these projects on an expedited timeframe as set forth in the kicker fund proposal.

Question 3. Proposed Criteria for State Kicker Funds

- (a) Will this proposal work to incentivize additional RDOF bids or deployments than would otherwise occur in California?

This proposal will provide a strong incentive for RDOF applicants to submit additional bids as part of the FCC’s RDOF reverse auction process. This is particularly true for bidders that intend to build networks capable of gigabit symmetrical speeds. The FCC auction formula and weighting methodology¹⁸ (shown below) reflects the FCC’s intent to “maximize the impact of finite universal resources by awarding support to those providers that will make the most efficient use of budgeted funds.”¹⁹

¹⁷ State of California, Executive Order N-73-20 (dated August 14, 2020), retrieved from <https://www.gov.ca.gov/wp-content/uploads/2020/08/8.14.20-EO-N-73-20.pdf> (last viewed October 14, 2020). The Commission opened the Broadband Rulemaking (R.20-09-001) in order to address the Executive Order. Yet, the Commission need not wait for that rulemaking to address CASF broadband deployment issues in this proceeding.

¹⁸ FCC, “Auction 904 Technical Guide: Bidding Procedures and Bid Processing Algorithms” at p.2 (dated June 10, 2020), retrieved from <https://docs.fcc.gov/public/attachments/DA-20-1161A1.pdf> (last viewed October 15, 2020); FCC 20-77 at para. 224.

¹⁹ FCC 20-77 at para 97.

$$\text{Implied support} = \min \left\{ R, \left(\frac{P - (T + L)}{100} \right) R \right\},$$

where:

- *R* denotes the area’s reserve price;
- *T* denotes the tier weight; and
- *L* denotes the latency weight.

Weights for Performance Tiers and Latencies							
Minimum		Baseline		Above Baseline		Gigabit	
High Latency	Low Latency	High Latency	Low Latency	High Latency	Low Latency	High Latency	Low Latency
90	50	75	35	60	20	40	0

The FCC will use the above formula to determine the amount of “implied support” which is the minimum amount of RDOF dollars a bidder will receive to provide service to the area they are bidding on. The RDOF auction bidding system works in rounds.²⁰ The system will announce a “clock percentage” before each round. The clock percentage delimits the range of acceptable bid percentages in each round of the auction and is a common unit to compare bids for different performance tiers and latencies, which are assigned weights (“T+L weights”). Bidders planning to deploy networks with better speeds and latencies will have lower T+L weights, meaning that these bidders will receive a higher level of implied support for that area compared to bidders deploying slower networks. The clock percentage begins at a high level, where the support amount will be equal to or close to the full “reserve price” (R) which is the average cost to provide broadband and voice services to the unserved locations in each block of the census block group. The clock percentage will descend from one round to the next until there are no bids. In a round, a bidder can submit a bid for a given area at a specified performance tier and latency combination at any percentage (P) that is greater than or equal to the round’s clock percentage and

²⁰ See FCC 20-77 para. 215-219.

less than the previous round's clock percentage. A bid indicates that the bidder is willing to provide service to the area that meets the specified performance tier and latency requirements in exchange for support that is no less than the support amount implied by the bid percentage.²¹ The FCC provides several examples of how this bidding formula works, as shown below:²²

Example 1:¹⁰ Consider an area with a reserve price of \$200.

- For a T+L weight of 0, the implied support at the 140% price point is \$200 (the reserve price), since $\{(140-0)/100\} * 200$ is greater than 200. The implied support at the 75% price point is \$150, since $\{(75-0)/100\} * 200 = 150$, which is less than the reserve price of 200.
- Similarly, for a T+L weight of 50, the implied support at the 140% price point is \$180 and the implied support at the 75% price point is \$50.

A bidder can submit a bid for support for a specific area by specifying a T+L weight and a price point percentage. If that bid is assigned during bid processing and the bidder is authorized to receive support during post-auction application processing, the bidder will then have the obligation to provide service to that area at the specified performance tier and latency in return for support greater than or equal to the support amount implied by the bid percentage (using the implied support formula). Because a second-price rule is used, the support payment to the bidder may be higher than the support amount implied by the bid percentage.

Example 2: Consider a bidder that is bidding to provide service with a T+L weight of 35 for an area with a reserve price of \$200. Suppose that the previous round's clock percentage was 80% and the current round's clock percentage is 75%. If this bidder submits a bid at the 77.5% price point and the bid is assigned during bid processing, the bidder will have the obligation to provide service at the specified performance tier and latency, and will receive a support amount of at least $\left(\frac{77.5-35}{100}\right) \200 , which equals \$85.

Example 3: Consider a bidder that is bidding to provide service with a T+L weight of 75 for an area with a reserve price of \$300. Suppose that the previous round's clock percentage was 130% and the current round's clock percentage is 120%. If this bidder submits a bid at the 128% price point and the bid is assigned during bid processing, the bidder will have the obligation to provide service at the specified performance tier and latency, and will receive a support amount of at least $\left(\frac{128-75}{100}\right) \300 , which equals \$159.

The Staff Proposal can encourage more bids under these FCC auction rules because the additional funding from CASF can allow applicants to submit bids at a lower percentage (P) or lower implied support level than they could afford absent the additional CASF “kicker” funding. For example, a RDOF bidder that can normally only afford to deploy gigabit broadband to an area

²¹ Id.

²² FCC, “Auction 904 Technical Guide: Bidding Procedures and Bid Processing Algorithms” at p.3.

at a \$200 implied support level, may continue to bid as the clock percentage drops to a point where the implied support level is \$180 or \$140.²³ This is possible because the bidder could receive an additional 10% to 20% in CASF kicker funds if the Commission approves the Staff Proposal. Also, because the kicker funds are only available to bidders that will provide gigabit infrastructure the Staff Proposal aligns itself with the FCC’s prioritization of “bids with lower tier and latency weights.”²⁴ If the Commission approves the Staff Proposal, providers that focus on gigabit infrastructure will not only be able to submit higher priority bids that have better speeds and latencies (and therefore lower T+L weights), they will also be eligible to receive 10-20% additional funding from CASF – further incentivizing these types of bids and deployment plans.

(b) Should different criteria for CASF-RDOF leveraging be considered?

Greenlining and TURN are satisfied with the current criteria and reserve the right to comment on additional criteria that may be proposed by other parties.

(c) Should the criteria be modified to better support faster development?

Greenlining and TURN understand “faster development” to refer to the requirement that an RDOF winner that accepts kicker funds must build to all locations in the project area within the first four years rather than within six years, or it must return the kicker funding. Greenlining and TURN are satisfied with the four-year requirement and reserve the right to comment on additional criteria, such as streamlined permitting or reducing reporting

(d) In light of the proposal to add California requirements on top of RDOF requirements, should fewer or other criteria be considered to simplify complying with state and federal requirements?

Greenlining and TURN reserve the right to respond to this question.

²³ These values are for illustration purposes only.

²⁴ FCC 20-77 at para. 215.

- (e) Should other approaches to maximizing California RDOF funding be considered? If so, how is another approach better or more effective?

Greenlining and TURN reserve the right to respond to this question.

- (f) Do additional arguments support the provision of Indefeasible Rights of Use for California Tribes? If not, what alternative criteria or program conditions would be appropriate and why?

Greenlining and TURN support the incorporation of incentives to provide access to infrastructure for California Tribes. The additional 10% in kicker funds will provide the carrier an incentive to affirmatively reach out to Tribes in the area, understand the communications needs and capabilities of the Tribe, form possible partnerships, and accommodate build out by the Tribe with a dedicated interconnection point. This incentive gives the Tribes certainty and independence over the leased facilities and allows the Tribe to design its own system using the infrastructure built with federal and state public money. The Staff Proposal is silent regarding the terms and conditions of this long-term lease and suggest the Commission should consider price caps for access to the interconnection point if applicable and other guidance for the terms of these leases. Greenlining and TURN do not have additional alternative criteria or additional program conditions at this time, but reserve the right to proposal additional criteria in response to parties' comments.

Question 3.3.Support Criteria Definitions

- (a) Should the definitions be modified for accuracy or clarity?

TURN and Greenlining support the Staff Proposal's definition of "gigabit-capable network infrastructure" as facilities that can reliably deliver symmetrical speeds of 1000 megabits per second. However, there are a number of other factors that can affect broadband service quality, including latency (the time it takes a packet to get to its destination), jitter (fluctuations in latency over time), and packet loss (one or more packets fail to reach their destination). TURN and Greenlining respectfully suggest that the Commission expand the definition of "gigabit-

capable network infrastructure” beyond just a minimum speed requirement to include a functional minimum service standard that gigabit-capable network infrastructure must support for high quality videoconferencing, telehealth, distance education, and remote employment.

Additionally, TURN and Greenlining note that this proceeding is using a “working definition” of “open access” that will likely be refined through the proceeding.²⁵ While the Staff Proposal includes a definition of “open access” for the purpose of the proposal, it should be modified to further specify, for example, the technical capacity requirements and minimum service standards of the facilities along with the lease terms and rates charged, for the purposes of the kicker funds.

Question 4.1. Letter of Credit and Financial Support for Kicker Recipients

(a) Should the Commission consider other financing support for kicker fund applicants?

The Staff Proposal references an analysis that found that, under the Staff Proposal, every dollar of CPUC kicker funding would result in four dollars of FCC funding.²⁶ Greenlining and TURN take no position on the specific assertions of the cited analysis, and urge the Commission to make the supporting documents for this analysis available to parties for review. However, based on the Staff Report’s assertion and subsequent discussions with Commission Staff, TURN and Greenlining are confident that the Staff Proposal will help secure additional RDOF dollars for California than what would be awarded absent the kicker fund proposal. Except for supporting the general goal to diversify and maximize all funding sources for these critical projects, Greenlining and TURN do not have recommendations for alternative financing sources at this time, but look forward to addressing other parties’ suggestions in reply comments.

²⁵ OIR at p. 7.

²⁶ Staff Proposal at p. 13.

(b) Should additional requirements or safeguards be included in the support for California kicker fund applicants to meet Letter of Credit requirements and secure financing?

While TURN and Greenlining do not currently have suggestions for additional requirements or safeguards, the Staff Proposal should further describe or define the obligations that Staff would undertake to “assist” kicker fund recipients to secure other financing or a Letter of Credit, and what the remedies will be if the provider does not satisfy its build out obligations.²⁷ It is not clear whether return of the kicker funds, as proposed by the Staff Proposal when the provider does not satisfy buildout requirements, is a sufficient safeguard or remedy in the event the provider fails to satisfy the Letter of Credit and outside financing obligations.

Question 5. Proposed Kicker Budget and Status of May 4, 2020 Applications

(a) Should other prioritization or prioritization factors be considered?

The Staff Proposal lists several factors that the Staff would use to prioritize funding, but does not further describe these factors.²⁸ TURN and Greenlining generally agree with the prioritization factors and provide their understanding of each factor and how they should be evaluated.

As an initial matter, TURN and Greenlining understand this prioritization does not apply to any CASF infrastructure applications that have no overlap with RDOF-eligible census blocks. Since those projects are not affected by availability of RDOF funding, the Commission would need to determine whether to fund those projects by November 13, 2020, based on regular CASF criteria, otherwise those applications would be deemed denied. By funding these applications on the original schedule, prior to granting funds to any RDOF related application, it will further limit

²⁷ Staff Proposal at pp. 18-19.

²⁸ Staff Proposal at pp. 19-20.

funding available to the RDOF funds. The Staff Proposal should address the potential impact on available funding by analyzing these more limited applications on the original schedule.

Should there be insufficient funds for all requests, the Commission should prioritize funding in the following order, with (1) being the highest priority and (3) being the lowest priority:

1. Requests for RDOF-kicker funds for projects that are awarded RDOF funds, where the requester was also a May 4, 2020 CASF applicant for at least some of the same census blocks in the project area.
2. Requests for RDOF kicker funds for projects that are awarded RDOF funds, but the requester was not also a May 4, 2020 CASF applicant for an overlapping project area.
3. All other May 4, 2020 CASF applications for projects that are not awarded RDOF funds.

Prioritizing the funding requests in this way would be in alignment with Section 270(c) for the Commission to maximize the use of available federal funding, and with Assembly Bill 82, which specifically clarifies the CASF statute to permit the CASF program to leverage RDOF funds to meet the state's deployment goals. This prioritization would also be aligned with the stated rationale of providing incentives for providers to apply for RDOF funds for projects in California, and increasing the chances for an RDOF applicant to receive federal funding, as described in the Staff Proposal. Moreover, it would conserve limited CASF funding, which can then be used to fund additional broadband deployment projects in the state, as described further above.

Within these priority categories, TURN and Greenlining urge the Commission to further prioritize funding for projects that, make a significant contribution to program goals, meaningfully engage with local Tribes and provide service on Tribal lands, or predominantly serve low-income communities. Each of these factors should be given equal prioritization weight, with a project receiving higher priority for each additional factor that is included in the project.

TURN and Greenlining disagree that the presence of non-CASF and non-RDOF funding for a project need to be taken into consideration at this time. Based on our review of the May 4, 2020 applications, all of them requested 100% funding from CASF, anticipating no outside funding.

(b) If a grantee (kicker recipient) cannot complete the project within the specified RDOF Phase I timeline, the grantee must notify the Commissions Division Director. Should more detail on the form of the notification be specified?

In addition to notifying the Commission that the kicker recipient cannot complete the project in the timeframe expected, the kicker recipient should be required to provide the Commission further explanation regarding the status of the project. For example, the Commission should also request the following information:

1. The project's anticipated adjusted timeline for completion; and
2. Whether there was an unexpected event that caused the project delay (e.g. an unexpected wildfire made the area unworkable temporarily, permitting was unreasonably delayed, requests to another carrier for interconnect, or leading facilities are unreasonably stalled).

This additional information will provide the Commission with more information to determine whether the project will likely be completed in the near term, and whether the delay was the result of events outside of the recipient's control. The Commission could use this additional information to determine whether to continue to support the project with the granted kicker funds, or to request the recipient reimburse the kicker funds to the Commission.

Question 5.1. Action on May 4, 2020 CASF Applications After RDOF Phase I Awards

- (a) Should a different approach to May 4 CASF Applications be considered?**
- (b) Should a different approach to RDOF kicker funds be considered?**
- (c) Should other factors or approaches be considered in evaluating May 4 CASF Applications with RDOF blocks where the CASF Applicant is not awarded RDOF support?**

TURN and Greenlining agree with the approach as stated in the Staff Proposal because it furthers the program goals while conserving limited CASF funds.

Question 5.2.Requests for Payments

- (a) Should other approaches be considered for payment of kicker funds?
- (b) The proposal contemplates penalties in the event a grantee fails to notify the Commission of any delays and the project fails to meet the approved completion date. What criteria should be considered with respect to the imposition of penalties in this section?

TURN and Greenlining agree with the approach as stated in the Staff Proposal and recommend that the recipient's notification to the Commission include additional information as discussed in our response to Question 5(b) above. The Commission could use its discretion to waive penalties for any project that is delayed due to unforeseeable circumstances that were no fault of the recipient.

Question 6.Timing

- (a) Is the timing outlined in Section 6 appropriate? Why or why not? If not, please suggest an alternative schedule and explain why it is preferable.

TURN and Greenlining agree with the approach as stated in the Staff Proposal because it provides potential kicker applicants with notice of the available kicker funding prior to the RDOF auction so that the applicant can take that into consideration when applying for RDOF funding. The Staff Proposal could clarify the timing of when the Commission will determine whether the Commission would grant a kicker request contingent on the FCC granting the requester's RDOF funds for the same census blocks, even if the Commission would not furnish the requester with the kicker funds until a later time. TURN and Greenlining do not have a position, at this time, as to whether paying the kicker funding in the first three years of a project is more helpful to RDOF winners than paying the kicker funding after that time period.

Question 7.1.Kicker Process for May 4 Applications and Other RDOF Winners

- (a) Should a different or modified process be considered? If so, how and why?

TURN and Greenlining agree with the approach as stated in the Staff Proposal but request clarification with the statement proposal that, "When the above review process is insufficient,

staff would be assigned the task of putting a Resolution before the Commission to award or deny kicker funds to RDOF winners.” The Staff Proposal should describe the scenarios wherein the ministerial “review process is insufficient.” If this description could include situations where the RDOF winner’s request for kicker funds is procedurally deficient, TURN and Greenlining suggest that a Commission resolution process may be unnecessary and would lead to delays. However, there may be many valid reasons to escalate certain applications for kicker funds to a Commission vote, the Staff Proposal should describe this.

Question 7.2. Process for May 4 Application Areas Without Kicker Requests

- (b) Should a different or modified process be considered? Is so, how and why?
- (c) Do commenters have suggestions to better clarify or explain how this process would be implemented

TURN and Greenlining agree with the approach as stated in the Staff Proposal.

Question 7.3. Application Window for Nearby CASF-Only Eligible Blocks

- (d) Should the proposed process and opportunity to apply for CASF-only census blocks be adopted?

TURN and Greenlining generally agree with the approach as stated in the Staff Proposal.

It is our understanding that this question applies to the additional application window for RDOF winning bidders for funding for adjacent CASF eligible areas, as opposed to applications from providers that did not apply for or did not receive RDOF funding. TURN and Greenlining agree that the funding for the adjacent CASF-census blocks should be evaluated based on CASF criteria including the appropriate funding level. It may be relevant that under the proposed timeline, if the application for CASF eligible areas will be due at about the time requests for kicker funds are due, applicants will likely be awarded kicker funds more quickly than they receive a ruling on the CASF application. This potential disconnect between the RDOF funds, kicker funds, and funding for nearby areas could make business planning and network planning more complicated and

expensive. TURN and Greenlining suggest that the Commission coordinate the awards of these funding sources rather than the application deadlines.

(e) Should information, items, or criteria be added to the staff review process?

TURN and Greenlining agree with the approach as stated in the Staff Proposal.

(f) The proposal contemplates a limited set-aside for CASF Applications from RDOF winners for areas near the CASF applicants' RDOF winning bid census block. If an amount should be set-aside, what amount should be set-aside for this section of the proposal and why?

While TURN and Greenlining generally agree with the approach as stated in the Staff Proposal, the specific amount for this proposed set-aside cannot be determined without knowing the estimated participation and project costs for these applications to cover nearby CASF areas. TURN and Greenlining do not believe the Commission will have sufficient information to accurately identify a set aside amount. Instead, we recommend the Commission consider prioritizing these funding requests at the same level as the “All other May 4, 2020 CASF applications for projects that are not awarded RDOF funds” as described our response to Question 5(a).

Question 8.Reporting

(a) Should other or different reporting be required?

Historically, market-based network investment decisions result in less investment in lower-income census blocks.²⁹ Inequitable and discriminatory investment decisions that leave low income and other vulnerable communities behind is often referred to as “digital redlining”—households of color, which are disproportionately low-income, are more likely to lack internet

²⁹ NDIA, AT&T’s Digital Redlining (Mar. 10, 2017), available at https://drive.google.com/file/d/0B62ag-I_FGHrbTYtMGdK0XZ4NmM/view (last accessed October 14, 2020); see also, Bill Callahan, AT&T’s Digital Redlining of Dallas: New Research by Dr. Brian Whitacre (Aug. 6, 2019), available at https://www.digitalinclusion.org/blog/2019/08/06/atts-digital-redlining-of-dallas-new-research-by-dr-brian-whitacre/?utm_medium=email&utm_campaign=Newsletters&utm_source=sendgrid (last accessed October 14, 2020).

access and be on the wrong side of the digital divide.³⁰ Greenlining and TURN respectfully suggest that the Commission require “kicker fund” applicants to report the demographics in the census blocks and locations where they have winning bids in the RDOF auction. For example, the percentages of Asian Pacific Islander, Black, Latino/Latina, Tribal, mixed-ethnicity households. This reporting should make applicants aware of the racial equity impacts of their investment and buildout plans and would provide transparency to the Commission and consumers regarding the applicant’s investment strategies and possible discriminatory practices.

Similarly, the Commission should ensure that recipients of “kicker fund” grants provide economic opportunity to communities of color.³¹ The Commission should **require** that recipients of “kicker fund” grants that meet revenue requirements of Public Utilities Code sections 366.2 and 8283, report its annual procurement and procurement plans under General Order 156. This reporting requirement will help ensure that grant recipients will cultivate relationships and contract with contractors of color.

Comments on the Appendices

(a) Please provide any recommended changes to the substance or form of the appendices.

The form in Appendix I requires applicants to demonstrate “[h]ow the project is eligible and meets specific criteria with supporting documentation.” However, the kicker levels described in the form do not appear to match the kicker levels as described in the Staff Proposal.³²

Specifically, the form in Appendix 1 does not require applicants to disclose how they comply

³⁰ Vinhcent Le and Gissela Moya, *On the Wrong Side of the Digital Divide: Life without Internet Access, and Why We must Fix It in the Age of COVID-19* (June 2, 2020), available at <https://greenlining.org/publications/online-resources/2020/on-the-wrong-side-of-the-digital-divide/> (last accessed October 14, 2020).

³¹ See generally, CPUC, *Environmental and Social Justice Action Plan*, retrieved from <https://www.cpuc.ca.gov/CPUCNewsDetail.aspx?id=6442461331> (last viewed October 15, 2020).

³² Compare Staff Proposal at pp. 14-15, with Appendix 1.

with the Level 1 criteria that the applicant consulted with Tribes using the Commission’s Tribal Consultation Policy. Moreover, the descriptions of Level 1a and Level 1b as described in the Appendix does not appear to account for qualifying for kicker funds via an expedited deployment timeline. TURN and Greenlining recommend that the form in Appendix 1 be modified to reflect the Staff Proposal levels for kicker funds.

III. CONCLUSION

TURN and Greenlining generally support the Staff Proposal, and recommend modification as described herein.

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/s/

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