BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking into the Review of the California High Cost Fund B Program	R.06-06-028

FURTHER COMMENTS OF THE UTILITY REFORM NETWORK IN RESPONSE TO THE FEBRUARY 7, 2008 CASF WORKSHOP

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Pursuant to the request of Administrative Law Judge ("ALJ") Pulsifer made at the conclusion of the February 7, 2008 workshop on the California Advanced Services Fund ("CASF") The Utility Reform Network ("TURN") submits these Further Comments in the above-captioned proceeding. TURN's further comments are organized using the structure provided in "Attachment B – The California Advanced Services Fund (CASF) Application Information" to the Assigned Commissioner's Ruling Scheduling Workshop and Providing Template for Review (1/23/08) ("ACR").

I. Background

TURN has no further comments at this time.

II. Definitions

TURN is in favor of technical neutrality when it comes to the distribution of subsidy dollars, as long as the technical neutrality does not come at the expense of service quality and affordability. There are profound differences in service quality between mobile data plans and fixed broadband deployment. Likewise, mobile data services are likely to be much more costly for consumers. Furthermore, the Commission must carefully consider the impact of mobile data services on the definition of unserved areas. Mobile data plans are not the equivalent of fixed broadband. While it certainly is true that some customers will get value from mobile data plans, the highly restrictive terms and conditions associated with wireless data plans (e.g., download limits, no streaming video, no file sharing, no VoIP, etc.), as well as their high costs, not to mention the fact that they may be incompatible for use with a personal computer, make them very poor substitutes for fixed broadband services.

Notably, the two wireless carriers that participated at the workshop have two very different perspectives of what wireless broadband would entail. On the one hand, AT&T Mobility stated that "the only device currently that would be applicable to this service is not a wireless device like a phone. It is a PC card that provides connectivity only to a computer."[1] Sprint/Nextel, however, has a very different perspective stating that wireless broadband is more likely to be connectivity through a handheld device through "wi-fi" and "within the very near future…Wi-Max."[2] These are clearly very different services with, as Sprint/Nextel stated "different values" that would be very hard to compare,[3] let alone compare to a fixed broadband offering.

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[1] Workshop Transcript , 2/7/08, p.66, lines 21-24 "(Tr.").

[2] Tr. p. 67, lines 12-18.

[3] Tr. p. 67.

If the Commission counts mobile data plans in its determination of whether an area is "unserved" versus "underserved," it is likely that lower priority will be given to areas that have no fixed broadband alternative, but may have the presence of a mobile data provider. Thus, the term "broadband" should be better defined to allow areas which do not have fixed broadband providers to retain the "unserved" status even if there is a mobile data provider.

III. Who May Apply

Clarification is needed regarding the "encouragement" to offer "basic voice service" which is identified with the application process. While this statement indicates that some weight will be given to provision of "basic voice," there is no data submission guideline associated with this "encouragement." However, there is a component of the scoring/ranking "checklist" (Appendix A of Attachment B) which includes the basic voice component.

During the workshop Commissioner Chong indicated that the Commission may be "reconsidering the requirement" that an applicant offer a basic voice service as part of its proposal.[4] TURN strongly supports reconsidering this requirement and permitting applicants that do not provide voice service to apply for CASF funding. This would allow locally based providers, who are familiar with the unique needs of rural communities, to receive CASF funding. However, if this requirement is not eliminated then the application requirements should be modified so as to include information on the basic voice service being proposed by an applicant. TURN continues to believe that

[4] Tr. p. 76, lines 3-4.

mingling subsidization of a lower grade of voice service with the provision of broadband is an inappropriate approach.

IV. Information Required From Applicants

1. Description of provider's current broadband infrastructure

TURN has no further comments at this time.

2. Description of proposed broadband project

The "description of proposed broadband project" requested is not specific enough. For example, DSL speeds may vary by distance. The requested information does not request enough specific information regarding the upload and download speeds associated with a project. The description requested will not allow the Commission to identify an accurate representation of the data speeds associated with the project.

The Commission should seek specific information about the download and upload speeds associated with the overall deployment. For example, if a specific deployment will result in 20% of the customers getting speeds of 5 Mbps/2 Mbps, 50% of the customers getting speeds of 1.5 Mbps/ 768 kbps, and 30% of customers getting speeds of 384 kbps/128 kbps, then these detailed statistics must be presented. In addition, a means of aggregating this information into a single number may be useful. TURN recommends that the Commission identify a consistent weighting scheme that will allow an "apples-to-apples" comparison of broadband speed deployments.

To evaluate data speeds, the Commission must consider the busy-hour engineering plan associated with the deployment, and evaluate whether sufficient capacity is being deployed. This will allow the Commission to determine whether the data throughput speeds identified by the bidder are consistent with the engineering plan.

The Commission must also identify how these data speeds will be measured, once the project is completed. There was discussion during the workshop of the impact of *all* aspects of Internet architecture on data throughput speeds. This discussion did not reflect the appropriate approach to the measurement issue. The Commission should measure data throughput speeds based on the maximum expected busy-hour throughput for the portion of the broadband providers' network that runs from the customer's premises to the first point of interconnection with outside networks (either through peering or a network access point), and the testing should reflect the impact of distance-related speed classifications associated with an overall deployment. TURN does not believe that it is appropriate to evaluate based on the "up-to" speeds that are used by broadband providers to advertise their products as proposed by AT&T at the workshop.[5] These marketing representations are not a reasonable basis for evaluating the quality of a broadband deployment.

If the Commission's evaluation of network deployment reveals that lower speeds than those represented by the bidder have been deployed, the bidder's subsidy should be reduced accordingly.

3. Geographic locations

Based on discussion during the workshop, TURN understands that the mapping that will be provided will include the specific boundaries of the areas to be served by the proposed project.

[5] See, for example, Tr. pp. 9-10.

A significant issue that arose during the discussion of geographic locations was that of confidentiality.[6] AT&T proposed that the only information that would be made public from a CASF application would be the CBG number for which an applicant is filing for a CASF grant ("it would just simply say Applicant X has filed for CBG, and then give the ten-digit number.)[7] While TURN appreciates the necessity for confidentiality, the Commission must balance that requirement against the need that a potential alternate bidder has for sufficient information to allow for a credible competing proposal. TURN proposes that potential bidders submit a detailed description of the proposed broadband territory. This would include the shapefile maps showing the CBG(s) nominated, and the specific boundaries of the areas to be served. The Commission will need to make information available regarding the nominated areas. Bidder's names need not be associated with the nominated areas.

4. Unserved vs. underserved locations

As discussed in item (2) above, it is essential that the Commission develop a standardized set of guidelines for reporting of data speeds. It is also important, when classifying areas as either "unserved" or "underserved" to identify restrictive conditions associated with service offerings. For example, if an area was served only by a mobile data provider that imposed download limitations or per megabyte download metering, this level of service is substantially different from an area where a fixed broadband provider operated, and did not impose download limits. As discussed above, the "unserved/underserved" distinction must be refined to focus on the provision of

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[6] Tr. Pp. 15-39.

[7] Tr. p. 15, lines 16-17. AT&T elaborated that "the public has to know so that a competitor, if nothing else, can see that they want to make a competing bid. Showing the competitor the exact boundaries of the territory to us is very, very sensitive. So that is where we say the list of CBGs, that might be ok." Tr. p. 17, lines 13-18.See also comments of Verizon, Tr. pp. 34-35.

reasonably comparable broadband services, and account for fundamental differences in mobile and fixed service offerings.

5. Estimated number of potential broadband subscribers

With regard to the estimated number of potential subscribers, TURN believes that the estimation required should be based on a set criteria, such as the number of households in the proposed service area, to identify the total potential universe of the project. However, the number of potential subscribers will be influenced by the price charged for the service. The applicant should also submit information regarding the marketing and pricing of its services, its projected subscription rates, and identify the applicant's plans to address service adoption by low-income consumers.

6. Schedule for deployment

The deployment schedule should identify all steps and prerequisite actions which must be taken to satisfy deployment. These could include gaining access to rights-of-way, gaining access to capital, gaining access to subscribers if multi-tenant buildings are involved, etc., as well as the construction milestones.

7. Proposed budget

TURN has no further comments at this time.

8. Performance bond

TURN has no further comments at this time.

9. Proposed recurring retail price

Broadband providers generally do not sell their services based on a "per Mbps" basis.[8] The bidders should be required to submit the retail prices for the service offerings that they are proposing, specifically matching a price to a service's upload and download speed. In addition, carriers frequently include term commitments. These must be addressed in the pricing commitment discussion as well. Consumers are affected by the overall pricing approach taken by a carrier. If the Commission is evaluating competing offers to provide broadband in a specific area, it should be able to evaluate issues such as whether month-to-month service is available, or whether the carrier will only sell based on term contracts. In addition, pricing directed at low-income consumers should be identified.

During the workshop it was suggested that additional information regarding limitations on the service offered, in light of the price be provided.[9] TURN believes that a description of the limitations imposed on a service (such as megabyte download caps, or restrictions on applications which can be utilitized), along with the price, should be reported as part of the application process. Furthermore, as discussed at the workshop, any non-recurring charges, for example, the cost of any equipment the subscriber must pay for should also be identified and weighed by the Commission in considering proposals.

10. Pricing commitment period

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[8] Broadband pricing typically associates a broadband "speed" with a monthly rate. Wireline broadband providers typically do not impose download volume (megabyte) limits. Some mobile data services identify a data speed, but also impose download limits which result in substantial overage charges if more than a certain number of megabytes of data is downloaded..

[9] Tr. p. 59, lines 7-19.

TURN is disappointed by the short-term pricing commitment of one year which is identified. Most of the costs of operating a broadband network are fixed costs. The subsidy program will be subsidizing these fixed costs. Thus, given the subsidization of the major component of broadband costs, it would seem reasonable to specify a longer pricing commitment. TURN believes that broadband deployed under the CASF program should have prices which do not increase by more than the general rate of inflation for a period of three years.

During the workshop Commissioner Chong stated that the pricing commitment period is short in recognition that since it may be "quite expensive" to provide broadband to unserved and underserved areas, the "Commission understands that these companies need to be able to recover their operating and maintenance costs going forward for these areas, and that in many of these areas that's a very difficult proposition."[10] TURN agrees that some of the areas that may be served utilizing CASF funds may be expensive, however, the provision of subsidy dollars is precisely to offset some of this expense. In addition, the Commission should not ignore the opportunity for a carrier, once the infrastructure is deployed, to sell additional services and applications to the new broadband customers at totally unrestricted prices. That revenue opportunity should be factored into the consideration of the length of a price guarantee.

TURN also believes that there must be a careful connection between the price description of Item 9 and the service/package for which there is a pricing commitment. The Commission must also clearly identify how the pricing commitment will be implemented. Does the clock start ticking when the first customer is served? When the

[10] Tr. p. 96, lines 9-19.

last customer is served? The carrier could easily game the system if the rules regarding pricing commitments are clearly satisfied. TURN recommends that the pricing commitment be implemented on a per-customer basis to ensure that consumers enjoy the full-term of pricing protection, and to prevent carriers from gaming the system.

11. Financial qualifications

TURN has no further comments at this time.

12. Proof of CPCN

TURN has no further comments at this time.

13. Contact information

TURN has no further comments at this time.

14. Affidavit

TURN has no further comments at this time.

V. Submission and Timelines

TURN believes that the proposed submission process is inefficient and should be modified. The first problem with the process is that bidders appear to be required to submit their entire proposal prior to a determination of whether an area is "unserved," "underserved," or otherwise. The second problem is the staggered nature of the bidding process, with the initial bidder facing the prospect of counter-proposals following its initial proposal. TURN also believes that the Commission should have the ability, on its own initiative, to nominate bidding areas, rather than to rely strictly on a carrier self-nomination process.[11]

[11]TURN also believes that there may be a substantial difference in the desirability of carrier self-nomination of bidding areas between the CASF process (which is more likely to be a competitive tender for

The CASF competitive tender process envisioned by the ACR requires the submission of sealed bids. However, the structure described "staggers" the submission of bids. It is highly unusual for a "sealed bid" process to allow subsequent bids to come in after some bids have been opened. The bidding process must be based on a structure which has a high degree of integrity. The staggered nature of bid submission is highly problematic. If the Commission pursues the staggered bid submission approach, the Commission must implement processes and procedures to ensure that the bids submitted after the initial bidder have not been influenced in any way by information which was in the Commission's possession. The processing of staggered competing bids will increase the complexity of the process, provide additional burden on the Commission's resources, and increase the possibility that information will flow from the Commission that can influence the bidding process, after the bidding process has begun. Staggered bidding should be abandoned.

An alternative structure will better serve the bidding process. TURN suggests that the following submission process and timeline be adopted:

Step 1: (Approximately June 2, 2008)	**Bidding areas nominated**: Potential bidders submit a detailed description of the proposed broadband territory.[12] This would include the shapefile maps showing the CBG(s) nominated, and the specific boundaries of the areas to be served. The nominating party should indicate whether the proposed area is "unserved" or "underserved," and provide supporting documentation. Once the Commission makes a preliminary determination that the nomination is from a viable entity, the Commission will make publicly available the description of the nominated areas, through a

"green field" deployment), and the CHCF-B COLR auction, where existing subsidy and existing service providers already exist.

[12]While the Commission could nominate areas at this point, TURN believes that it is more likely that the Commission would nominate areas on the Step 4 September 1, 2008 date, or on some later date.

	web site and/or other formal public distribution system. The names of the entities nominating areas should not be associated with the nominated areas.
Step 2: 30 Days Following the Publication of Nominated Areas (Approximately July 2, 2008)	**Challenges to nominated areas:** Challenges to nominated areas status as "unserved" or "underserved" designation are due. Parties challenging the "unserved" or "underserved" designation must submit evidence that supports their challenge. If any nominated area is challenged, it should be deferred to a resolution process conducted by the Commission to determine the actual status of broadband service in the area.
Step 3: 30 Day Following the Challenge/No Challenge Date: (Approximately August 1, 2008)	**Round 1 Bids Due:** For each bidding area nominated, which has not been deferred due to challenge, complete bids are due from all bidders. Once bids are submitted, the Commission will identify all bidders which have bid, the areas which were bid for, and the areas for which there are competing bids.
Step 4: 60 Days Following Identification of Challenged Areas (Approximately September 1, 2008)	**Resolution of Challenges:** The Commission resolves issue of broadband service in areas which have been challenged. The Commission publishes information regarding the areas that have been confirmed as unserved or underserved. The Commission also nominates any additional areas in which it has interest in seeing bids.
Step 5: 60 Days Following Submission of Bids For Unchallenged Areas (Approximately	

October 1, 2008)	**Round 1 Grant Awards:** The Commission announces grants made for both the competitive and non-competitive areas associated with the Step 3, August 1, 2008 bids.
Step 6: 30 Days Following Resolution of Challenged Bids (Approximately October 1, 2008)	**Round 2 Bids Due:** Bids are due for areas which were made available for bid with the Step 4 (September 1, 2008) process. (Round 1 Grant Awards and the due date for Round 2 bids should fall on the same day so that Round 2 bidders can not gain information from the grants awarded in Round 1).
Step 7: 60 Days Following Submission of Bids For Previously Challenged Areas (Approximately December 1, 2008)	**Round 2 Grant Awards:** The Commission announces grants made for both the competitive and non-competitive areas for which bids were submitted in Step 6, i.e., those areas which were made available due to the Step 4 resolution of challenges.

TURN believes that this approach is superior to the approach currently proposed. A variation on the above could defer the entire bidding process until the Commission had resolved any challenges. However, whether or not challenges will arise is unknown, and thus TURN believes that it makes the most sense to develop the parallel approach which would allow uncontested areas to proceed while the issue of the status of service that may arise in some areas is resolved.

TURN also encourages the Commission to establish a set of protocols associated with opening and evaluating bids which extends beyond the scoring criteria identified. For example, who will be present when bids are opened? How will it be determined whether bids are "complete" or have missing information? Will applicants be given the

opportunity to supplement applications if the Commission finds them to be incomplete? How will the supplementation process differ if there are competing or non-competitive bids? As an example of the types of protocols the Commission should be considering, TURN has attached a copy of the Procurement Instructions associated with a competitive tender process utilized by the London Regional Transport authority to select private vendors to serve bus routes (Attachment A). Section 10 of that document identifies the protocols utilized in processing bids, and provides an example of protocols associated with developing a bidding process.

VI. Proposed Checklist

TURN has no further comments at this time except to note that the checklist must be modified to accommodate any changes made in the "information required from applicants" discussed above.

VII. Scoring Criteria

The problems discussed above with definitions that need to be enhanced flow through to the scoring criteria. However, TURN believes that the biggest problem with the scoring criteria is that the criteria give undue weight to criteria which are poorly defined, or which can easily be gamed by the applicants. The scoring criteria should be as concrete as possible, and not rely on promises or projections, but instead focus on verifiable criteria associated with a plan. In the proposed scoring plan vague criteria which are open to gaming such as "Timeliness of Completion," "Service Area," and "Pricing" are awarded 30% of the overall weight. These weights, as well as the 50% that goes to the "Funds Requested," swamp the speed criteria (and the speed criteria is further

diminished through the formula proposed). TURN offers the following suggestions and modifications to the scoring criteria:

i) Funds requested per customer. This criteria relies on the applicant's representation of the number of "potential customers." As discussed above, this number needs to be better identified (e.g., households in the proposed service area). Furthermore, the number of potential customers will be influenced by the prices charged, the term of the pricing commitment, and whether any effort will be targeted to encourage adoption by low-income customers. TURN recommends that this criteria be restated to "funds requested per household in serving area." TURN recommends that the number of points that should be awarded be limited to 35. The Commission can apply the proposed formula, but the Commission should hold back ten (10) points if the bidder does not address subscription by low-income households, thus making the maximum available for a bidder which does not address low-income subscription 25 points. Bidders which present plans to encourage service adoption by low-income consumers, should, based on the Commission's evaluation of the plan, be award up to 10 additional points from the "hold back" points (maximum points from this criteria = 35).

ii) Speed. The description of this ranking criteria does not match with ACR's Section IV discussion of speed. As was discussed earlier in these comments, the quantification of proposed speeds must be refined. Furthermore, this scoring criteria raises the issue of "current speeds." There was no discussion of what "current speed" means, and how non-incumbent firms might be able to get the needed data to determine "current speed."

In the formula that appears on page 7 of Attachment B to the ACR, the term "n" is not defined. During the workshop, the staff clarified that "n" denotes the "population."[13] However, this statement is contradicted by the calculation shown in the Excel file which was distributed by the Staff. In that file, "n" is shown to be the number of bidders.[14] Thus given the conflicting statements, it is not possible to interpret this equation. It should also be noted that the formula applied in the Excel file circulated by Staff is not logically consistent with the formula presented on page 7 of Attachment B to the ACR. The formula on page 7 uses a summation operator, which means that for each data point, a difference is taken. In the Excel spreadsheet, the square root function is applied to the difference in the "before and after" upload and download speeds for the individual applicant. That number is then divided by the count of total applicants. Thus, in the formula on page 7 the divisor "n" is inside the square root function, however, in the Excel spreadsheet the divisor "n" is outside the square root function. Thus, two different approaches are identified for evaluating speed. The rules of algebra specify that the square root of a ratio is not equivalent to the square root of a number in the numerator divided by a number in the denominator. For example, $\sqrt{\frac{50}{2}}$ is not the same as $\frac{\sqrt{50}}{2}$.

However, even if this lack of clarity is rectified, there is a much larger problem with the evaluation of the speed criteria. First, the speed criteria should have its weight increased to 20 points. Second, the equation uses a square root function which is said to "express the diminishing return of value associated with increasing speed." The

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[13] Tr. P. 96, line 26.

[14] See, for example, cell F13 in the Excel file "**Error! Main Document Only.**Scenario_Analysis_of_CASF_scoring.xls", which was attached to an e-mail message distributed by the Staff following the workshop.

weighting scheme, which assigns only 15 possible points to the speed already "diminishes" the impact of speed on the ranking. The use of a square root function biases the overall ranking process against those which can offer higher speeds. According to the recently released California Broadband Task Force Report:

> The major gating factor in the improvement of broadband applications is the speed of access to the network. Just as text-oriented applications improved in quality and quantity as dial-up modem speeds increased from 9.6 kbps to 56 kbps, so too have broadband applications exploded as businesses and consumers have moved from 56 kbps modems to 500 kbps to 1 Mbps to 3 Mbps broadband connections. Newer, better broadband applications like high-quality video conferencing, remote medical care, distance learning, and remote monitoring will require broadband connections of symmetrical 10 Mbps services and more. If Californians do not have access to broadband infrastructure that is capable of providing these higher speeds, they will be separated from the benefits that broadband applications can bring them.[15]

The proposed weighting scheme is completely disconnected from this assessment (and note that the Broadband Task Force singled out as desirable the same symmetrical 10 Mbps speed that TURN proposed in its Comments). TURN believes that a better speed ranking criteria is to utilize a "benchmark ratio" approach. The Commission has established speed benchmarks of 3 Mbps download and 1 Mbps upload. While TURN believes that these values should have been higher, if the Commission is using them as a standard, then the bidders applications should be benchmarked accordingly.

TURN proposes the following formula:[16]

$$[b_i/Max(b)]*20$$

where

[15] "The State of Connectivity—Building Innovation Through Broadband," Final Report of the California Broadband Task Force, January 2008, p. 36.

[16] As discussed above, a meaningful statistic of speed based on the busy hour maximum upload and download speed available to consumers should be established, and this statistic should reflect the distance limitations (if any) associated with the specific technology being deployed. This will result in a weighted average number for upload and download speed.

b_i = *(Applicants Proposed Download Speed)/(3Mbps) + (Applicants Proposed Upload Speed)/(1 Mbps)*

and

Max(b) = the highest b_i

Thus, for example, if a Bidder A proposed to offer service with 2 Mbps upload and 6 Mbps download, and Bidder B proposed to offer service with 0.5 Mbps upload and 1.5 Mbps download, Bidder A would be awarded 20 points, and Bidder B would be awarded 5 points.[17]

Furthermore, there is no provision for testing identified. The Commission must establish a testing criteria which, as discussed above, should review engineering models for network deployment, and verify busy-hour speeds from customer premises to the first point of Internet interconnection.

iii) Service Area. Attachment B to the ACR indicates that the applicant should submit "a list of CBGs, the total square miles, and any other appropriate geographical information." TURN believes that a more specific measure of service area should be established, one that does not open the possibility of the applicant gaining credit for establishing a "service area" which is largely unpopulated. An exchange at the workshop illustrates the potential problem with the current description:

> MR. GIBB: Scott Gibb with Verizon. I guess I just wanted to clarify something that Don brought up in the determination of the size of the area served. If we installed DSL in a central office, conceivably we could provide service in an 18-

[17]Bidder A's b_i = (6/3) + (2/1) = 4. Bidder B's b_i = (1.5/3) + (.5/1) = 1. Thus, for Bidder A the formula awards the full 20 points, and for Bidder B, the bidder receives ¼ of 20 points.

> kilofoot radius from that central office, but if a majority of our customers are down one -- one pole lead and, say, 1200 feet on either side of that pole lead, you want us to only submit the actual area currently being possibly served by the deployment of DSL, or the potential?
>
> ALJ PULSIFER: I think I think what we're after is the potential is really the goal.[18]

Using the "potential" service area does not provide a meaningful criteria. As Mr. Gibb's statement indicates, the circular "service area" hypothetically available from DSL service may grossly overstate the actual service area. As an alternative illustration of the problem, a wireless carrier's footprint could hypothetically "cover" an entire CBG, while an ILEC might have facilities deployed in the 40% of a CBG where there are actually households. It makes little sense to give the wireless carrier's application extra weight for having coverage in unpopulated areas.

TURN recommends that instead of using service area based on a geographic measure, such as square miles, that a measure based on the number of households in the service area be applied. Under this measure, the points will be determined by the following formula:

$$N_i/Max(N)*10$$

Where N_i is the number of households in the bidder's service area, and Max(N) is the maximum number of households among the relevant bids.

iv) Timeliness of Completion of Project TURN does not believe that the proposed measure should be used as a ranking criteria. The ranking process is completely *ex ante*, and the Commission will have no way of determining whether one

[18]Tr., p. 97, line 24 to p. 98, line 8.

applicant's "promise" regarding the date the deployment will be completed is superior to another applicant's "promise." TURN recommends that this ranking criteria should be dropped, and that the points should be shifted to other criteria.

v) Pricing. TURN believes that the current approach to evaluating the pricing aspect of the applicant's proposal is inappropriate. The five (5) points associated with this critical component of subsidized broadband deployment is insufficient. TURN believes 25 points is a better weight. The other problem with the proposed weighting criteria is that it does not account for the lower per Mbps prices which might be associated with higher-speed offerings, which might have high absolute prices. The high absolute prices can discourage consumption, especially by lower income consumers. TURN believes that the two-part scoring approach discussed below is the best way to address the pricing issue. Another issue which must be addressed, which was also not addressed in the ACR, is how to calculate the per Mbps rate. TURN recommends that the upload and download speeds be summed to provide the basis for the price. For example, for a bidder proposing to offer service with 3 Mbps download and 1 Mbps upload, the value "4" (the sum of the upload and download speeds) should be used to determine the per Mbps prices.

The comparative ranking should be performed based on the following:

Basic Broadband Price Component: Identify the lowest monthly price for service which provides at least 3 Mbps upload and 1 Mbps download:

$$[\text{Min}(\text{Monthly Basic p})/(\text{Monthly Basic } p_i)]*20$$

Premium Broadband Price Component: Identify the lowest monthly price for the fastest broadband service to be offered:

$$\text{Min}(\text{Monthly Premium } p)/(\text{Monthly Premium } p_i)]*5$$

The overall points will be determined by summing these two components.

Example:

Bidder A proposes the following prices for a basic broadband service offering 3 Mbps download and 1 Mbps upload:

Basic Broadband Monthly rate: $25

Bidder A's fastest service provides 6 Mbps download and 2 Mbps upload:

Premium Broadband Monthly Rate: $50

Thus, Bidder A's price per Mbps for the Basic and Premium offerings are:

Bidder A Basic: $25/4 = $6.25 per Mbps

Bidder A Premium: $50/4 = $12.50 per Mbps.

Bidder B proposes to offer a basic broadband service offering 3 Mbps download and 1 Mbps upload:

Basic Broadband Monthly rate: $40

Bidder B's fastest service provides 15 Mbps download and 3 Mbps upload:

Premium Broadband Monthly rate: $65

Thus, Bidder B's price per Mbps for the Basic and Premium offerings are:

Bidder B Basic: $40/4 = $10.00 per Mbps

Bidder B Premium: $65/18 = $3.61 per Mbps.

The points are calculated as follows:

Bidder A:

($6.25/$6.25)*20 = 20

($3.61/$12.50)*5 = 1.44

Bidder A receives a total of 21.44 points.

Bidder B:

($6.25/$10.00)*20 = 12.5

($3.61/$3.61)*5 = 5

Bidder B receives a total of 17.5 points.

vi) Guaranteed Pricing Period. TURN believes that applicants committing to increase broadband prices at a rate no more than the rate of CPI-U inflation for a period of three years should receive 10 points. Applicants committing to rate increases of no more than CPI-U for a period of 24 months should receive 5 points.

VIII. Conclusion

For the reasons discussed above, TURN respectfully urges the Commission to adopt the recommendations made herein.

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Respectfully submitted,

_____/S/_____

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ATTACHMENT A

Section 10: Tender Evaluation and Negotiation

Introduction

10.1 An overriding principle that must be applied throughout the procurement process is fairness to all tendering parties. The following paragraphs set out the means by which Surface Transport will aim to achieve fairness throughout the tender evaluation and negotiation stages.

Receipt and Opening of Tenders

10.2 The envelopes/ outer packing of sealed tenders are to be date stamped on receipt and initialled as proof of date and time of receipt and kept locked in a secure place by the addressee pending opening. Tenders should be opened as soon as reasonably possible after the due date by staff with appropriate Procurement Authority.

10.3 There must always be at least two members of staff present for tender opening. At least one of these must be independent of the Transaction.

10.4 If tenders have been opened, any tenders received after the final closing date and time specified must not be considered.

10.5 If tenders have not been opened, any tenders received after the final closing date and time specified MUST NOT BE CONSIDERED. However, if it is believed that exceptional circumstances have prevented the physical delivery of the tender package, the nominated recipient of the tender must consult the LBSL Head of Procurement for advice. In these circumstances the confidentiality of the tendering process and any risk of tampering with tenders or other unethical conduct must be carefully considered. The reasons for the decision whether or not to accept the late tender must be recorded on the relevant Transaction file.

10.6 If a tender is opened before the tender receipt date or time (either accidentally or otherwise) all parts of the package(s) must immediately be taken to the LBSL Head of Procurement. The person opening the tender must prepare a note explaining the circumstances and giving full details of all persons that had access to the documents contained in the package(s). The LBSL Head of Procurement will assess the circumstances and decide a course of action, which may include: abandoning the tender process and re-issuing ITTs etc., exclusion of the tender from consideration, re-sealing of the bid. In these circumstances the integrity of the tendering process and any risk of tampering with tenders or other unethical conduct will be carefully considered. The reasons for the decision must be recorded on the relevant Transaction file. Deliberate opening of a tender before the agreed date or time will be reported to the individual's manager and may be cause for disciplinary action.

10.7 **At the opening of the sealed tenders, the TCF prepared at the time the ITTs are issued (see Appendix 9) is to be updated with the number of sealed and open bids, the date and time of opening, the tender prices, and certified by those present. The tenders are to be stamped by those present on the page(s) showing the summarised price(s) for the Transaction. If tender details have not been summarised, the appropriate parts of the tender documents are to be signed by those present. Any amendments or modifications contained in the tender are to be noted and the relevant page stamped and signed (it is not necessary to retain envelopes and packaging after tender opening).**

10.8 If it is proposed that tenders which would normally be sealed are submitted by electronic means, the LBSL Head of Procurement must be consulted and will consider together with the LBSL IT Manager if the integrity of the tender process can be protected satisfactorily. Surface Transport staff and tenderers must then comply with any instructions given.

Evaluation and Negotiation

10.9 The Client must ensure that appropriate arrangements are put in place to ensure confidentiality of information throughout the tender evaluation and negotiation process. For low value, low risk Transactions security arrangements may be informal in nature. For major and/or high risk Transactions, however, security arrangements should be clearly agreed in advance, documented and communicated to all members of the bid-evaluation team. Such arrangements might include, for example, numbered copies of documents, use of 'copy-proof' paper, locked data-rooms etc.

10.10 A competitive Transaction (where 2 or more compliant tenders are received) must be awarded to the supplier offering the most economically advantageous tender or quotation having regard to all relevant objective criteria including, as appropriate, estimated final price, whole life cost, timeliness, technical, health, safety, quality and the environment, maintaining and developing competition and sustainability of supply.

10.11 Where a tender proposes payment terms which differ from Surface Transport's normal payment terms (payment via BACS 30 days from receipt of a correctly prepared and submitted invoice), including prompt or deferred payment terms, the LBSL Head of Procurement must be consulted.

10.12 The scheduling of payment milestones shall be arranged to safeguard legitimate commercial interests including protection of Surface Transport from possible losses in the event of contractual default.

10.13 All tenders shall be evaluated in accordance with the criteria specified in the ITT.

10.14 Where sealed tenders have been invited and for commercial or technical reasons further negotiations are deemed necessary, details of such discussions held with potential suppliers are to be documented and retained for inspection.

10.15 Negotiating tactics and objectives are to be prepared and agreed with the person exercising Budget Authority over the Transaction prior to all negotiating meetings. Notes of meetings and visits are to be prepared and filed for future reference.

10.16 The principle of equality of opportunity shall be extended to each participant selected to take part in each round of negotiations.

10.17 Where the Transaction value is greater than £5,000 but is not greater than £25,000 any negotiations shall be conducted by a person with a Procurement Authority appropriate to the estimated value of the Transaction. *A record of negotiations must be included with the Transaction file for review by the LBSL Head of Procurement or the assigned Purchasing Manager.*

10.18 Where the Transaction value is greater than £25,000 any negotiations shall be conducted on a "buying team" basis with at least two members of staff present, one of which must have a Procurement Authority appropriate to the size of the Transaction. **A record of negotiations must be included with the Transaction file for review by the LBSL Head of Procurement or the assigned Purchasing Manager.**

Recommendation for Contract Award

10.19 Following evaluation of all tenders the Client must make a recommendation for contract award clearly setting out the reasons for selection of the successful supplier with appropriate supporting data. The procurement specialist should be consulted for all Transactions with a value greater than £25,000 prior to the recommendation being approved.

10.20 A separate formal recommendation document is not required for contracts of less than the Surface Transport EU Administrative Thresholds, but sufficient detail must be noted on the Transaction record to justify the award recommendation.

10.21 A separate formal recommendation document is required for contracts of more than the Surface Transport EU Administrative Thresholds. Guidance on the format and content of such documents is shown in Appendix 10.

10.22 A representative of the Client department with appropriate Budget Authority must approve the award of a contract or Purchase Order.

10.23 Approval to award a contract may be conditional upon certain agreements or arrangements being negotiated or agreed. In such cases the criteria that must be met as a minimum must be clearly stated. If such criteria are not met the person that initially approved the award (or a nominated deputy) must approve the final award proposal.

CERTIFICATE OF SERVICE

I, Larry Wong, certify under penalty of perjury under the laws of the State of California that the following is true and correct:

On February 19, 2008 I served the attached:

FURTHER COMMENTS OF THE UTILITY REFORM NETWORK IN RESPONSE TO THE FEBRUARY 7, 2008 CASF WORKSHOP

on all eligible parties on the attached lists to **R.06-06-028**, by sending said document by electronic mail to each of the parties via electronic mail, as reflected on the attached Service List.

Executed this February 19, 2008, at San Francisco, California.

____/S/_____

Larry Wong

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