Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Rural Digital Opportunity Fund	)	WC Docket No. 19-126
	)	
Connect America Fund	)	WC Docket No. 10-90

To: The Commission

REPLY COMMENTS OF THE WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION

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Summary

When it initiated the Rural Development Opportunity Fund proceeding, the Federal Communications Commission ("Commission") proposed to adopt the basic structure it used for the Connect America Fund Phase II ("CAF II") reverse auction because that structure was successful. Commission Chairman Ajit Pai said so, stating that CAF II "produced higher-speed broadband and lower costs. That's a killer combination that we want to replicate."[1] So one would assume that commenters in the proceeding would focus on proposals to improve the process and make it more efficient.

To an extent, that assumption proved true. A number of commenters made proposals that are intended to help the new auction better achieve the Commission's stated goal of deploying as much broadband to as many Americans as the program's budget will allow. The Wireless Internet Service Providers Association ("WISPA") made modest proposals to improve weights for different bidding tiers to accommodate the new three-tier structure, prioritize areas that most need support until more accurate location data is available, retain the auction's short-form and long-form application processes, eliminate the standalone voice requirement, and retain census block groups as the geographic unit for the auction. The record supports these proposals, and WISPA is also pleased to be part of what has proven to be an overwhelming consensus in favor of improving the Commission's letter of credit requirements. All of these proposals are reasonable ways that the Commission can improve RDOF and make it even more successful than the CAF II auction. WISPA urges the Commission to adopt these proposals consistent with the

[1] *Rural Digital Opportunity Fund; Connect America Fund*, Notice of Proposed Rulemaking, 34 FCC Rcd 6778, 6835 (2019).

weight of evidence in the record, and also to adopt a new intermediate speed tier of 50/5 Mbps as proposed in these Reply Comments.

WISPA is also part of the overwhelming consensus recommending that the Commission forego adopting a subscription milestone requirement. A wide range of service providers agree that such a milestone is likely not achievable without diversion of substantial resources, nor is such a milestone necessary given the array of buildout requirements and compliance measures already proposed to be applied by the program. Subscription rates are also subject to changes in market conditions that are beyond the control of support recipients.

But even though the record shows support for measures that would improve the auction, a number of commenters propose resurrecting old, rejected attempts to favor fiber deployments over any and all other competitive technologies. These commenters again and again assert that the purpose of the auction is to support the highest speeds possible using fiber, regardless of actual consumer behavior, regardless of cost, and regardless of whether such an approach would end up limiting support to a relatively small portion of unserved areas. These commenters urge the Commission to apply excessively high bidding weights to service tiers below Gigabit speeds, and to impose byzantine weighting proposals and service obligations for the sole purpose of biasing the auction against alternative technologies.

The Commission should reject these recycled proposals, just as it rejected similar or identical proposals during the CAF II proceeding, because they do nothing to advance the Commission's goal of reaching as many Americans as possible and are intended only to favor wireline interests that have already had decades to deploy fiber and failed to do so. Having sent such a clear message about its priorities in its Notice of Proposed Rulemaking, the Commission should not now entertain the arsenal of exclusionary practices proposed by these commenters simply because they asked one more time. Moreover, and as described in detail in these Reply Comments, the Commission should also reject miscellaneous proposals that distract from the focus of the program and appeal only to narrow sets of private interests.

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COMMENTS OF
THE WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION

The Wireless Internet Service Providers Association ("WISPA") hereby replies to Comments submitted in response to the Commission's Notice of Proposed Rulemaking ("*NPRM*") in the above-captioned proceeding.[2]

Introduction

In the very first paragraph of the *NPRM*, the Commission acknowledged that "[b]roadband access is critical to economic opportunity, job creation, education, and civic engagement" and stated that "closing the digital divide is the Commission's top priority."[3] The Commission thus proposed the $20.4 billion Rural Digital Opportunity Fund ("RDOF") as "the Commission's single biggest step yet to close the rural digital divide."[4]

As set forth in its initial comments, WISPA supports the overall structure the Commission proposed for the RDOF, based as it is on the sensible and successful structure of the

[2] *Rural Digital Opportunity Fund, Connect America Fund*, Notice of Proposed Rulemaking, 34 FCC Rcd 6778 (2019) ("*NPRM*").

[3] *Id.* at 6779, ¶ 1.

[4] *Id*. at 6779, ¶ 4.

Connect America Fund ("CAF") Phase II reverse auction process.[5] WISPA made specific proposals for the Commission to (1) narrow the gap in the proposed bidding tiers, (2) allow performance bonds as an alternative to letters of credit ("LOCs"), (3) not adopt subscription milestones, (4) eliminate the standalone voice requirement, and (5) prioritize areas most in need of support until it has completed its concurrent process to improve the quality and reliability of location data.[6] Each of WISPA's proposals advances the Commission's top priority of closing the digital divide. These proposals strengthen the process, broaden participation, and target support as early as possible to where it is most needed. In these Reply Comments, WISPA adds to its earlier proposals a new proposal for a 50/5 Mbps speed tier that is intended to encourage faster speeds and broader participation by providers committing to exceed the 25/3 Mbps Baseline performance tier.

Although commenters may differ on specific aspects of the auction process, they have shown a remarkable degree of agreement on specific issues. Numerous commenters support modifying the proposed auction structure to allow the use of more accurate location data to better identify where broadband is available and where it is not. Service providers also agree that subscribership milestones are not necessary for a program required to support broadband availability and that the Commission must allow alternatives to the CAF II auction LOC requirements. Again, consensus on these issues shows an interest in advancing the goal the Commission set for RDOF.

Other parties, however, have made proposals that have little to do with deploying broadband to as many Americans as can reasonably be reached given the budget of the program.

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[5] *See* Comments of WISPA, WC Docket Nos. 19-126 & 10-90 (filed Sept. 20, 2019) ("WISPA Comments") at iv-v.

[6] *See id.* at 10-14, 16-18, 19-26, 28-32, 34-41.

Rather, these proposals are self-servingly intended to protect what incumbent wireline providers see as their "entitlement" to high-cost support. They do so by proposing biased and complicated weighting schemes that would cut off competitive technologies, and propose unnecessary application requirements and restrictions that would limit support to only those providers using wireline technology to reach customers. In effect, these commenters want the Commission to forego policies that invited open and innovative participation in the CAF II auction, and instead establish a policy that favors fiber over all other technologies.

The Commission wisely rejected such industrial policy proposals for the CAF II auction in favor of an open, technology-neutral approach and should do so again here. The Commission can best create competition, encourage investment from multiple technologies and companies, and achieve sustainable broadband service deployment to the most Americans, by retaining its CAF II framework and avoiding industry-protective restrictions and instead encouraging a mix of approaches based on deployment and performance.

Discussion

I. NO PARTY MAKES A CONVINCING CASE TO DEPART FROM SUCCESSFUL TECHNOLOGY-NEUTRAL POLICIES

Wireline providers, electric cooperatives, and their supporters have made various different proposals to skew the RDOF auction in favor of all-fiber networks and against fixed wireless and other innovative technologies. WISPA will rebut these specific proposals in detail, but at the outset it is useful to explain that many of these proposals share a common and misleading theme that fixed wireless is somehow flawed and as such RDOF should only support fiber-to-the-home deployments. The Commission should apply a disqualifying level of skepticism to any such proposals, particularly when they ask the Commission to apply restrictions that would dramatically veer away from CAF II's reasonable emphasis on a network's capabilities rather than its particular technology. This is even more true in RDOF than it was in CAF II, for the simple reason that the cost differential between fiber and wireless is even greater in these less densely populated areas.

A. Commenters Ignore the Commission's Established Policies, the Reality of Fixed Wireless, the Commission's Performance Requirements, and the Failure to Deploy Fiber to Unserved Americans

Various commenters level any number of criticisms at fixed wireless in an attempt to justify extremely high weights for below Gigabit tiers or other exclusionary measures. For example, the North Dakota Joint Commenters ("NDJC"), a group of incumbent wireline carriers, assert that RDOF should only support "future-proof fiber," characterizing fixed wireless as "spotty and unreliable."[7] The Buckeye Hills Regional Council ("BHRC") repeatedly states that "terrain and foliage" make it difficult for fixed wireless to offer broadband solutions in Appalachia and asserts that foliage growth requires "nimble network reengineering" to work.[8] Conexon dismisses fixed wireless as "inherently less reliable" and proposes favoring fiber to the home regardless of cost or feasibility.[9] The "Joint RDOF Commenters" – three small wireline incumbents – allege that fixed wireless providers misrepresent census blocks where they can

[7] Comments of the North Dakota Joint Commenters, WC Docket Nos. 19-126 & 10-90 (filed Sept. 19, 2019) ("NDJC Comments") at 1-3.

[8] Comments of the Buckeye Hills Regional Council, WC Docket Nos. 19-126 & 10-90 (filed Sept. 19, 2019) ("BHRC Comments") at 1, 6-7, 8; *see also* Comments of the West Virginia Broadband Enhancement Council, WC Docket Nos. 19-126 & 10-90 (filed Sept. 20, 2019) ("WVBEC Comments") at 8-9 (alleging mountainous terrain makes fixed wireless "less beneficial to end users").

[9] Comments of Conexon, WC Docket Nos. 19-126 & 10-90 (filed Sept. 20, 2019) ("Conexon Comments") at 8-9, 10-11.

provide service, providing a series of anecdotes that purport to show that fixed wireless providers do not and cannot operate in their service areas.[10]

These comments, and others like them that seek to exclude innovative wireless and competitive technologies from the RDOF auction, are fundamentally flawed for at least four reasons.

First, they ignore the Commission's clear goal to encourage participation by different types of technology. In the order establishing the CAF II auction, the Commission stated that its performance tiers reflected the "diversity of broadband offerings in the marketplace today" because it wanted to "maximize the number of consumers served within our finite budget."[11] Chairman Pai endorsed this policy, stating that he thought it boded well for the program that the rules were "designed to induce new entrants like the wireless Internet service providers, small-town cable operators and electric utilities to participate."[12] Commissioner O'Rielly emphasized the importance of using innovative technologies to extend service efficiently, expressing concern that skewing the auction towards premium fiber service for a few consumers "provides a nice soundbite, but it is a distraction from the effort to connect the maximum number of people with the limited dollars available in our budget."[13] Commissioner O'Rielly reiterated that concern in the *NPRM*, stating that he supported the application of technology-neutral principles in RDOF,

[10] Comments of the Joint RDOF Commenters, WC Docket Nos. 19-126 & 10-90 (filed Sept. 19, 2019) ("Joint RDOF Comments") at 5-7, 9-12; *see also* Comments of Alteva – NJ, WC Docket Nos. 19-126 & 10-90 (filed Sept. 20, 2019) ("Alteva Comments") at 2, 4.

[11] *Connect America Fund, et al.*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket Nos. 10-90, 14-58 and 14-259, 31 FCC Rcd 5949, 5957, ¶ 16 (2016) ("*CAF Phase II Auction Order*").

[12] *Id.* at 6109.

[13] *Id.* at 6111.

pointing out that "[w]hile many tend to prefer fiber-based solutions, our resources here are not unlimited and our job is to get broadband to all Americans, regardless of technology."[14]

Nevertheless, in the face of this record, a few commenters continue to insist that the Commission must only support fiber deployments, disregarding the impact the higher cost will have on the RDOF budget and the significant time it will take to extend fiber to rural and remote locations. An excellent example of this is found in the recent *ex parte* filing by BHRC, justifying higher reserve prices by pointing to the very high cost of fiber deployments.[15] By comparison, fixed wireless has been shown to require one-seventh the capital cost of fiber, and so can prove to be a much more efficient use of RDOF funds.[16] By continuing to assert that only fiber should be supported, fiber-focused commenters add nothing to the record that the Commission has not already heard many times and already rejected.

Second, they cite very specific local conditions and anecdotes as justifications for weightings and other restrictions that would be national in scope – a "one-size-fits-all" policy for fixed wireless. This is just as illogical as stating that since some wireline technology relies on twisted copper pairs, extreme weights or restrictive policies should be applied to fixed wireless bidders. If fixed wireless were as "inherently unreliable" or difficult to use as these commenters claim, then there would, presumably, be no circumstance under which WISPs could be successful. But in reality, fixed wireless provides broadband to over 4 million people, mostly in rural and remote areas, and continues to grow and evolve as new spectrum and transmission

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[14] *NPRM* at 6837.

[15] Letter from Tom Reid, BHRC, to Marlene H. Dortch, FCC Secretary, WC Docket Nos. 19-126 and 10-90 (filed Oct. 17, 2019) ("BHRC *Ex Parte*"), Attachment at 19.

[16] *See* The Carmel Group, *The BWA Industry Report* (2017) at 12, *available at* https://carmelgroup.com/wp-content/uploads/2017/12/TCG_2017_BWA_Full_Report.pdf (last visited Oct. 18, 2019).

technologies become available. Having already surpassed DSL in terms of performance, it could even be said that fixed wireless is a better technology than fiber given its evolving technology advancements such as massive MIMO. Moreover, fiber-only commenters repeatedly characterize fiber as "future proof," but ignore the fact that fixed wireless network are continually, economically and easily upgraded with new spectrum, better coverage and better transmitters.

The commenters seeking to exclude fixed wireless providers from the RDOF auction intentionally miss the obvious point that different technological fixes will be best suited to different types of environments. The Commission explicitly recognized this in the *NPRM*, stating that because the CAF II auction was successful "in obtaining commitments from winning bidders for the deployment of robust service from a variety of service providers," the Commission proposed "to adopt similar technology-neutral standards."[17] The Commission established a policy that focuses on whether a network can meet a specific and directly relevant set of deployment performance criteria, and rejects dependence on any specific technology or business model. The Commission should reject these attempts to have it make general policy for the entire country on the basis of shallow anecdotes from small portions of it.

Third, these commenters ignore the Commission's performance requirements, which effectively address many of the issues identified by them as justifying exclusionary policies. The Commission has proposed extensive deployment obligations with specific speed, latency and usage allowance requirements, service milestones, and reporting requirements.[18] The Commission has defined a commercial offering to a location as requiring the recipient to provide

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[17] *NPRM* at 6785, ¶ 23.

[18] *Id.* at 6785-91, ¶¶ 23-39.

service within 10 business days of a request without expending an extraordinary commitment of resources.[19] Why, then, is it necessary to impose additional weighting or application requirements on only fixed wireless bidders contrary to every policy statement the Commission has made to date? It may indeed be necessary to conduct "nimble reengineering work" to connect with a customer location, or deploy more towers or spectrum to extend service or increase speeds – all ordinary tasks that WISPs perform every day. But, just like every other winning bidder, WISPs will only be able to count locations to which they can provide service in 10 business days, and will be subject to the Commission's enforcement authority should they fail to meet buildout obligations or service requirements. A WISP cannot provide "spotty and unreliable" service if it is required to meet specific deployment obligations to at least 95 percent of eligible locations. That is the purpose of the Commission's extensive reporting and testing regime, not a basis for the Commission to preclude providers from participating. Therefore, the Commission should reject attempts by fiber companies to penalize fixed wireless bidders based on mischaracterized allegations.

Fourth, these commenters ignore the fact that WISPs would not be providing service to as many customers as they serve today if existing providers had been able to deploy fiber in any sustainable way to millions of unserved customers. NDJC, BHRC, Conexon, and the Joint RDOF Commenters appear to assume that the Commission can be tricked into believing that fiber optic technology was invented in the last couple of years and so it makes sense only to invest in fiber today. Rather, the policies adopted in the CAF II auction and proposed here are the right policies because incumbent wireline providers have had fiber for decades and failed to deploy even the barest minimum of broadband Internet service to their customers, demonstrating

[19] *Id.* at 6787-88, ¶ 28.

better than any economic study that fiber to the premises is not economically sustainable in parts of the country. Inviting different innovative technologies to compete for support remains the most efficient way to deploy broadband service to the most Americans.

B. The Fiber Broadband Association Analysis is Questionable and Irrelevant

In a vein similar to the above comments, the Fiber Broadband Association ("FBA") submits an analysis that purports to show that customers value fiber at $800-825 per year and value fixed wireless at $200-250 per year, thus arguing for extremely high weighting for the Baseline tier.[20] To justify such a low relative value to fixed wireless service, FBA's analysis states that fixed wireless connections "are distance sensitive and have variable coverage and reliability."[21] A brief examination of all 12 slides of FBA's analysis shows that its methodology raises more questions than it answers. FBA's comparative values for services are aggregates of values its consultant chose for use cases its consultant also chose, with no explanation of how those values were calculated or why they should be considered reasonable. Moreover, the analysis gives no explanation why two technologies meeting the same performance criteria (as would be required should they compete in the same tier) should be valued at all differently by the end user. As for claims of "distance sensitiv[ity]" and "variable coverage and reliability," these assertions are overcome by common, everyday network design techniques such as relocating customer premise equipment to a different spot on the customer's rooftop, constructing a new access point or using different spectrum to provide service to the consumer.

But these methodological weaknesses aside, FBA's analysis is simply irrelevant to the Commission's inquiry. Even if the relative consumer values of the analysis could be taken as

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[20] Comments of the Fiber Broadband Association, WC Docket Nos. 19-126 & 10-90 (filed Sept. 20, 2019) ("FBA Comments") at 10, App. A 12.

[21] *Id.* at 10, App. A 9.

credible, they would only show the ideal value of a use case to a consumer, but would in no way show what the consumer would be likely to buy. As WISPA explained in its Comments, the Commission's most recent data show that a relatively small number of consumers subscribe to Gigabit speeds when available, while the majority opt for lower speeds.[22] USTelecom cited the same data in its comments to point out that speeds of 25/3 Mbps have a take rate of 23.1 percent to 57.7 percent in rural areas, while the take rate for 100/20 Mbps ranges from 10 to 25 percent.[23] Tellingly, FBA's analysis does not cross-reference the purported ideal value of the various technologies it analyzes with how much consumers would be willing to pay for service from a network using that technology. The statutory requirement of "reasonably comparable" supported service does not mean some ideal speed that a fiber trade association wants to encourage in order to sell more fiber. As the Commission has established, it means speeds that have some rational relation to what broadband subscribers actually buy.[24]

C. The Joint RDOF Commenter Anecdotes Provide No Helpful Information

The Joint RDOF Comments cited above ask the Commission to make nationwide policies based on the purported misdeeds of a few fixed wireless carriers, as evidenced by a handful of anecdotes and poorly documented "secret shopper" calls. As noted above, the entirety of the Joint RDOF Commenters' complaints about service coverage would be addressed by the Commission's extensive vetting of short-form and long-form applications, buildout obligations,

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[22] WISPA Comments at 13-14 (citing *2019 Broadband Deployment Report*, 34 FCC Rcd 3857, 3887, Fig. 13 (2019) ("*2019 Deployment Report*").

[23] Comments of USTelecom—The Broadband Association, WC Docket Nos. 19-126 & 10-90 (filed Sept. 20, 2019) ("USTelecom Comments") at 37-38 (citing *2019 Deployment Report* at 3887, Fig. 13).

[24] *See CAF Phase II Auction Order*, 31 FCC Rcd at 5959, ¶ 24 ("Our decision to establish this baseline performance standard for Phase II based on the highest speed adopted by a majority of fixed broadband subscribers builds on the approach we adopted in December 2014.")

service milestones, and reporting requirements, not by excluding auction participation. Moreover, the Joint RDOF Commenters' anecdotes fail to acknowledge that, within 10 business days, a fixed wireless provider can provide service to a customer location by adjusting antennas, clearing line-of sight-obstacles, relocating customer equipment, and taking myriad other steps. In any event, a rulemaking of general application is hardly the place to resolve extremely specific service coverage complaints and issues. The Commission should thus understand these comments as less a reasonable critique of fixed wireless service than the Joint RDOF Commenters' transparent attempt to protect their service areas from better service. Their singular focus on this issue reveals a sense of dread about improved service that they are themselves apparently unwilling to undertake.

D. "All or Nothing" Should Not Apply to Supported Services

Verizon correctly points out that pushing fiber deeper into the network does not necessarily lead to the conclusion that RDOF should only support fiber because more extensive fiber will support *both* wireline and fixed wireless services: "Not only will wireline and fixed wireless services provide robust broadband to homes and businesses, but they will be built on scalable fiber infrastructure that will support future increases in broadband speeds and also provide the foundation for the deployment of both 4G and 5G mobile wireless services in rural areas."[25] Verizon also explicitly recognizes that different technologies may be better suited for different areas, stating that "the RDOF program could meet its objectives by awarding support for fiber-to-the-home deployments in some relatively lower-cost eligible areas and for fixed wireless deployments in higher-cost eligible areas."[26]

[25] Comments of Verizon, WC Docket Nos. 19-126 & 10-90 (filed Sept. 20, 2019) ("Verizon Comments") at 4-5.

[26] *Id*. at 7.

Acknowledging that advances in wireless and wireline technology will complement one another and result in better service for more Americans is a much more reasonable position, and far more consistent with the Commission's approach, than the kind of centrally planned industrial policy favored by commenters like FBA and Conexon. The Commission rejected a "fiber only" policy in the CAF II auction, and instead adopted a policy that favors auction participation by a broad number of bidders using different technologies. It should continue to do so for RDOF. Neither the record of the CAF II proceeding, nor the results of the auction, nor the record in this proceeding support the exclusionary and inefficient approaches urged by certain commenters.

II. THE COMMISSION SHOULD REJECT ATTEMPTS TO USE WEIGHTING AGAINST NON-WIRELINE TECHNOLOGIES, BUT SHOULD ADD A NEW INTERMEDIATE SPEED TIER

A. The Commission Must Reject Various Weighting Schemes Intended to Exclude Alternative Technologies

Most of the proposals to change the weights proposed in the *NPRM* fell into one of two categories:

- they impose very high weights on the Baseline and Above Baseline tiers to exclude technologies that compete with fiber; or
- they impose extraordinarily complicated and burdensome weighting systems to exclude non-traditional carriers and reinforce wireline carrier entitlements.

In the first category, wireline incumbents, electric utilities and their supporters have proposed extremely high weights for the Baseline tier of 70, 75, or even 95, or proposed simply eliminating the tier entirely.[27] Some of them have also proposed increasing the Above Baseline

[27] *See* BHRC Comments at 9 (Baseline weight of 95, Above Baseline weight of 30); FBA Comments at 11-12 (Baseline weight of 70); Comments of ACA Connects, WC Docket Nos. 19-

tier to as much as 50, 60 or even 75.[28] Support for such absurdly high weighting is minimal to nonexistent, with commenters largely relying on assertions rebutted above: that the Commission should choose winners and losers based on the commenter's preferred technology, an approach the Commission squarely rejected in the CAF II auction and proposes to again reject here. There is simply no actual data to support imposing as much as a 70 to 95 point weight against 25/3 service, or a 50 to 75 point weight against 100/20 service, much less any data indicating that effectively eliminating Baseline or Above Baseline speeds from RDOF will result in "reasonably comparable" service. On the contrary, as WISPA notes above, and as USTelecom has also shown, most subscribers do not opt for the fastest possible speeds available, but instead buy what they reasonably believe is sufficient for their needs.[29]

Indeed, the only "data" submitted to justify increasing the weights proposed by the Commission was the questionable and unpersuasive analysis submitted by FBA. To the contrary, the only extensive statistical study of bidding behavior as a result of weights was the Paul Milgrom/Auctionomics analysis submitted by Viasat for the purpose of showing that the Commission's proposed weight for high latency should be reduced.[30]

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126 & 10-90 (filed Sept. 20, 2019) ("ACA Comments") at 9 (Baseline weight of 75); Comments of The Utilities Technology Council, WC Docket Nos. 19-126 & 10-90 (filed Sept. 20, 2019) ("UTC Comments") at 10 & n.19 (eliminate Baseline tier); *see also* Comments of NTCA—The Rural Broadband Association, WC Docket Nos. 19-126 & 10-90 (filed Sept. 20, 2019) ("NTCA Comments") at iv, 10-12 (Baseline weight of 79).

[28] *See* NDJC Comments at 1-2 (Above Baseline weight of 50); NTCA Comments at iv, 10-12 (Above Baseline weight of 60); UTC Comments at 10 & n.19 (change 100/20 Mbps Above Baseline to Baseline and apply weight of 75).

[29] In this respect, it is useful to note that while USTelecom made numerous proposals, and opposes subscribership milestones on the basis of the subscriber take rates cited above, USTelecom did not propose increasing the weights for the Baseline or Above Baseline tiers. *See* USTelecom Comments at ii-iii.

[30] Comments of Viasat, Inc., WC Docket Nos. 19-126 & 10-90 (filed Sept. 20, 2019) at 12-21 & Exhibit A.

In the second category, commenters propose dizzying menus of various different weights that would apply unless a bidder's service looks and functions exactly like incumbent wireline service. The table summarizing WTA's proposed weights spans two pages and would effectively foreclose bidders who have not replicated the incumbent wireline company's systems.[31] The West Virginia Broadband Enhancement Council proposes adding unspecified (but presumably high) weighting factors regarding the extent to which technology can be upgraded, suitability of technology to topography, degree of public satisfaction and affordability.[32] Nowhere does the Council explain how such weightings could be defined or objectively applied.

For CAF II and the proposed RDOF auctions, the Commission wisely rejected adding weights to drive specific policy results that would have created a cumbersome, unworkable, and unreasonably discriminatory process. Instead, the Commission adopted in CAF II and proposes here a simple set of bidding weights that are relevant to the provision of broadband service for the customer: speed, usage and latency of the service. The Commission does apply specific service obligations and requirements to winning bidders, such that there is no need to complicate its auction process by imposing service specific requirements through its weighting process.

Similarly, a handful of commenters propose that the bidder with the lowest speed and latency combination wins even if lower percentages are bid by other providers.[33] The

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[31] Comments of WTA—Advocates for Rural Broadband, WC Docket Nos. 19-126 & 10-90 (filed Sept. 20, 2019) ("WTA Comments") at 16-17.

[32] WVBEC Comments at 1-2, 8-9.

[33] *See* Comments of The National Electric Rural Cooperative Association, WC Docket Nos. 19-126 & 10-90 (filed Sept. 20, 2019) ("NRECA Comments") at 9; Conexon Comments at 1, 6; Comments of The Mississippi Public Service Commission, WC Docket Nos. 19-126 & 10-90 (filed Sept. 20, 2019) at 2.

Commission should reject this proposal out of hand. The only purpose of the auction, then, would be to determine where fiber providers want to provide service, and would effectively eliminate any competition to such networks. Rather than allow the possibility of a more efficient technology providing reasonably comparable service, this kind of proposal would simply drive results in the majority of census block groups to exactly the kind of network gold-plating the Commission has wisely rejected.

B. WISPA Supports Addition of a New 50/5 Mbps Tier and Reweighting

In its Comments, WISPA proposed that the Commission narrow the gaps between Gigabit and the other service tiers in order to better accommodate the elimination of the 10/1 Mbps minimum tier.[34] On review of the comments in the record, WISPA now believes that the goals of the auction are better served by introducing an intermediate tier at 50/5 Mbps and keeping the weights of the other tiers as originally proposed in the *NPRM*.

Several commenters make the argument that introducing a tier between 25/3 Mbps and 100/20 Mbps would strike an appropriate balance between satellite networks capable of providing 25/3 Mbps speeds and more robust networks that could economically provide faster speeds, while still driving overall network deployments towards higher speeds. Sacred Wind states that fixed wireless networks can provide speeds "well in excess of 25/3 Mbps" and proposes an additional performance tier of 50/6 Mbps with a weighting of 30 in order to provide a reasonable next tier that would distinguish fixed wireless from satellite networks.[35] WTA, acknowledging that broadband speeds will increase over time, proposes to "encourage long-term broadband service planning and preparation and discourage short-term minimalist bidding

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[34] *See* WISPA Comments at 12-14.

[35] Comments of Sacred Wind Communications, Inc., WC Docket Nos. 19-126 & 10-90 (filed Sept. 20, 2019) ("Sacred Wind Comments") at 6-7.

tactics" by adding an "Evolving Baseline Tier" with a speed of 25/3 Mbps in years one to five and 50/6 Mbps in years six to ten.[36] The Institute for Local Self-Reliance believes the Baseline tier should be changed from 25/3 Mbps to the 50/10 Mbps speeds adopted in Canada to encourage long-term planning and use of technologies capable of delivering faster speeds over time.[37]

A few other commenters propose various new tiers at much higher speeds, though these proposals differed on speeds and, as WISPA points out above, these proposals offered new tiers as part of a larger weighting scheme to crowd out non-fiber providers.[38] The above commenters, however, have all coalesced around a new tier at the same level of service, added for the explicit purpose of encouraging providers using different technologies to bid and provide higher than the Baseline speed proposed by the Commission. WISPA's members are often capable of providing speeds in excess of 25/3 Mbps, and WISPA believes a new intermediate tier would generate substantial interest and result in higher speeds over a longer term for more Americans than the original three-tier plan. A download speed of 50 Mbps is supported by the record, and an upload speed of 5 Mbps is not only similar to other record proposals but is also consistent with the 50/5 Mbps service tier already made part of the Commission's reasonable comparability benchmarks.[39] Moreover, if the CAF II auction results in which a very small percentage of bidders won support for 10/1 Mbps speed are predictive of future RDOF auction results, the 50/5

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[36] WTA Comments at 10-11.

[37] Comments of the Institute for Local Self-Reliance, WC Docket Nos. 19-126 & 10-90 (filed Sept. 20, 2019) ("ILSR Comments") at 2-3.

[38] *See, e.g.,* NTCA Comments at 7 (500/100 Mbps at weight of 30, and significantly raise lower weights); UTC Comments at 10 & n.19 (250/50 Mbps at weight of 35, eliminate 25/3 Mbps).

[39] *See* Public Notice, *Wireline Competition Bureau Announces Results of 2019 Urban Rate Survey,* 33 FCC Rcd 12316, 12318 (2018).

Mbps tier will attract more winning bids than the minimum 25/3 Mbps tier, a result that serves the public interest in making faster broadband speeds available to consumers over time.

At the same time, should the Commission adopt a four-tier system with a 50/5 Mbps tier, then the gaps originally proposed by the Commission would be appropriate and the narrowing proposed by WISPA in its comments would be unnecessary. WISPA's revised proposal is thus summarized as follows:

Performance Tier	Speed	Monthly Usage Allowance	Weight
Minimum	≥ 25/3 Mbps	≥ 150 GB or U.S. median, whichever is higher	50
Baseline	≥ 50/5 Mbps	≥ 150 GB or U.S. median, whichever is higher	30
Above Baseline	≥ 100/20 Mbps	≥ 2 TB or U.S. median, whichever is higher	15
Gigabit	≥ 1 Gbps/500 Mbps	≥ 2 TB or U.S. median, whichever is higher	0

III. THE RECORD STRONGLY SUPPORTS AUCTIONING THE MAJORITY OF SUPPORT AFTER BETTER LOCATION DATA IS AVAILABLE

Parties from across the broadband provider industry, as well as state and local governments, agree with WISPA that the Commission should wait to begin Phase I of RDOF until after it has completed its Digital Opportunity Data Collection ("DODC") proceeding,[40] or at least has a database of broadband-serviceable locations (referred to as the "Fabric") complete for unserved locations.[41] ITTA explains the need for better data concisely, stating that because of

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[40] *See Digital Opportunity Data Collection*, Report and Order and Second Further Notice of Proposed Rulemaking, WC Docket Nos. 19-195 and 10-90, FCC 19-79 (rel. Aug. 6, 2019).

[41] *See* USTelecom Comments at 11; Comments of United States Cellular Corporation, WC Docket Nos. 19-126 & 10-90 (filed Sept. 20, 2019) ("US Cellular Comments") at 11; Comments

the sheer scale of RDOF it is imperative for the Commission to "have the benefit of a granular, accurate, and thorough accounting of unserved and underserved locations in eligible areas."[42] US Cellular explains the importance of having more accurate data by reference to the data the Commission currently has, and is worth quoting in full:

> An auction for the disbursement of $16 billion in universal service support is a big deal. Unless the Commission plans to substantially expand the size of the fund, RDOF Phase I is by far the largest expenditure the Commission will make over the next decade in its ongoing efforts to close the Digital Divide. The Commission cannot go forward with an auction until it has a picture of rural America that is more accurate than the one depicted by FCC Form 477.[43]

A wide variety of commenters agree that current data is not sufficiently granular to allow for accurate targeting of support to unserved and underserved areas. For example, the Pennsylvania Public Utility Commission shows that because Form 477 data is based on deployment to entire census blocks, it results in "dramatic overreporting" of served areas.[44] USTelecom, CenturyLink and Windstream point to the pilot report developed by the Broadband Mapping Coalition, of which WISPA is a member, showing that 38 percent of rural locations reported as served are actually unserved, and for 48 percent of census blocks the number of

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of Windstream Services, LLC, WC Docket Nos. 19-126 & 10-90 (filed Sept. 20, 2019). ("Windstream Comments") at 1, 6-7; Comments of ITTA—The Voice of America's Broadband Providers, WC Docket Nos. 19-126 & 10-90 (filed Sept. 20, 2019) ("ITTA Comments") at 11-12; Comments of the California Public Utilities Commission, WC Docket Nos. 19-126 & 10-90 (filed Sept. 20, 2019) ("CA PUC Comments") at 3; Comments of the National Association of Counties, et al., WC Docket Nos. 19-126 & 10-90 (filed Sept. 20, 2019) ("NAC Comments") at 1-2; Comments of the Nebraska Public Service Commission, WC Docket Nos. 19-126 & 10-90 (filed Sept. 19, 2019) at 4.

[42] ITTA Comments at 3.

[43] US Cellular Comments at 11.

[44] Pennsylvania Public Utility Commission, et al., WC Docket Nos. 19-126 & 10-90 (filed Sept. 20, 2019) ("PA PUC Comments") at 12-13.

housing units can be off by 32 to 55 percent.[45] The California Public Utilities Commission estimates that if the Connect America Cost Model undercounts eligible locations by as much as 38 percent, then 300,000 locations in California may be skipped over for funding.[46] The State of Maine submits that 83,144 households in Maine lack service of at least 25/3 Mbps, which is significantly more than reported in the Form 477 data.[47] And while WISPA disagrees with the BHRC on its critique of the quality and reliability of fixed wireless technology, the Council convincingly uses real world examples and maps to show that wireline incumbents use census block designations to overstate their actual buildouts, in some cases by more than 10 to 1.[48]

The record also shows that it is not likely to take a great deal of time to develop more accurate data. USTelecom estimates that it would only take five to eight months longer to complete the more accurate and granular reporting than it would take to conduct an auction, and Windstream estimates six months, which it considers "a small price for delivering broadband to more rural Americans and using contributors' funds as efficiently as possible."[49] Notably, ACA is the only party to advocate moving forward as quickly as possible with Form 477 data, incorrectly stating that "none of these [data reporting] proposals is going to be implemented

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[45] *See* Windstream Comments at 6; USTelecom Comments at 6-7; Comments of CenturyLink, WC Docket Nos. 19-126 & 10-90 (filed Sept. 20, 2019) ("CenturyLink Comments") at 8-9; *see also* Letter from Jonathan Spalter, et al., to Marlene H. Dortch, FCC Secretary, WC Docket Nos. 19-195, 11-10, 10-90 and 19-126 (filed Aug. 20, 2019).

[46] CA PUC Comments at 4.

[47] Comments of State of Maine ConnectME Authority and the Maine Broadband Coalition, WC Docket Nos. 19-126 & 10-90 (filed Sept. 20, 2019) at 2-4.

[48] BHRC Comments at 3-5; BHRC *Ex Parte* at Attachment, 7.

[49] USTelecom Comments at 11; Windstream Comments at 9.

soon" and failing to address the inaccuracies of current data or to explain in any convincing way why it believes the cost of relying on better data outweighs the benefit of doing so.[50]

WISPA's proposal to resolve location issues through a challenge process and obtain more accurate data before the RDOF auction begins is thus well supported by the record. But should the Commission decide to move forward with a first phase before doing so, the record also shows support for WISPA's proposed alternative of conducting sequential auctions, prioritizing areas (1) without at least 10/1 Mbps, and (2) where price cap carriers receiving CAF II model-based support are not yet providing 25/3 Mbps. NTCA and Windstream correctly point out that prioritizing wholly unserved areas in Phase I reduces the need for more specific mapping data.[51] Other parties have also proposed splitting the auction into multiple tranches or reducing the amount of Phase I support so the majority of support can be allocated in subsequent phases.[52] UTC and the Pennsylvania PUC agree with WISPA that the Commission should prioritize areas without at least 10/1 Mbps.[53] While commenters in this proceeding take a variety of different positions on whether to exclude certain areas or how exactly to prioritize areas in Phase I as opposed to subsequent phases, the record shows that prioritizing wholly unserved areas is unobjectionable, as is waiting to allocate support in areas where location data is needed until more accurate and granular data is available through the new DODC process.

A few rate of return carriers oppose including their areas that are entirely or almost entirely overlapped by unsubsidized competitors because current location data may exaggerate

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[50] *See* ACA Comments at 19-20.

[51] NTCA Comments 31-32; Windstream Comments at 10.

[52] *See* Comments of Space Exploration Technologies Corp., WC Docket Nos. 19-126 & 10-90 (filed Sept. 20, 2019) ("SpaceX Comments") at 8; WVBEC Comments at 5-6.

[53] UTC Comments at 15-16; PA PUC Comments at 3-4, 16-18, 20.

the extent of competitive coverage.[54] This, however, would lead to an absurd result in the case of areas that are entirely unserved by at least 10/1 Mbps. As noted above, NTCA and Windstream pointed out, more specific location data is not needed when it is already known that the area is entirely unserved.[55] Thus, if the Commission accepted this proposal, it would unfairly shield rate of return carriers that have failed to provide any significant broadband service in their areas from having to compete for support. Consistent with the principle that RDOF must prioritize remaining unserved areas, the Commission should not exempt or delay broad swaths of rate of return areas that are known to be wholly unserved.

In its Comments, WISPA supported a challenge process to confirm whether a location is served or unserved, and a number of other parties have also expressed their support for a "strong" or "robust" challenge process.[56] WISPA emphasizes, however, that the extensive record evidence of the inaccuracy of current data shows that a challenge process cannot serve as a substitute for more accurate location data. Using current, inaccurate data, it is reasonable to expect a huge number of challenges to eligible areas, which will take much longer to resolve than if the Commission starts with a more accurate dataset just a few months later, producing a much smaller number of more targeted challenges and accelerating the process as a whole.

Should the Commission implement a challenge process, the overall goal of the process should be to confirm whether an area is actually served or unserved, preferably starting from a better baseline of DODC data, and must focus on whether a competitor could implement the

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[54] Joint RDOF Commenters at 2-3, 8-9; Alteva Comments at 2, 4.

[55] USTelecom Comments at 11; Windstream Comments at 9.

[56] *See, e.g.,* ACA Comments at 20; NTCA Comments at v, 36-39; UTC Comments at 14; WVBEC Comments at 3, 6-7; NRECA Comments at 5; Comments of NCTA—The Internet & Television Association, WC Docket Nos. 19-126 & 10-90 (filed Sept. 20, 2019) ("NCTA Comments") at 5.

Commission service requirement of being able to deploy service to a location within 10 business days. The clearer and simpler the goal of the challenge process, the harder it will be for parties to seek unfair subsidies by including locations already benefitting from broadband competition, or for parties to seek unfair protection by excluding unserved locations.

IV. THE RECORD SUPPORTS RETAINING CENSUS BLOCK GROUPS AS THE GEOGRAPHIC UNIT FOR THE RDOF AUCTION

Numerous parties agreed with WISPA that census block groups best balance the concerns of larger and smaller bidders, and are the most feasible geographic units to administer in the auction.[57] By contrast, ACA supports bidding at the census block level, alleging that many of its members did not participate in the CAF II auction because they did not want to have to serve uneconomic areas.[58] This argument, however, betrays an unwillingness to deploy the best, most cost-efficient technology to provide service in hard-to-reach areas. By requiring bidders to bid in census block groups, the Commission requires bidders to build out to the hardest-to-reach areas, rather than cherry picking more densely populated census blocks that require the least amount of effort and innovation to serve. Adopting ACA's suggested approach would inevitably result in unserved locations continuing to be unserved for the foreseeable future. The record thus supports the Commission retaining census block groups as the geographic unit for the RDOF auction, since this policy provides the best chance of reaching these locations and achieving the goals of the program.

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[57] *See* NTCA Comments at iv, 16-18; ITTA Comments at 6-7; Comments of Muscogee (Creek) Nation, WC Docket Nos. 19-126 & 10-90 (filed Sept. 20, 2019) ("MCN Comments") at 2; Sacred Wind Comments at 2.

[58] ACA Comments at 11.

V. THE RECORD OVERWHELMINGLY SHOWS THAT A SUBSCRIBERSHIP MILESTONE IS NEITHER ALLOWED UNDER THE ACT NOR GOOD POLICY

The hundreds of pages of comments submitted in the record take varying positions on prioritization, tier weights, application requirements and so on. Some of these policy disagreements rise to the level of parties trying to effectively exclude one another from the auction. But whatever their other policy disagreements may be, and however deep they may run, it is remarkable that the record shows parties from across the industry consistently agreeing that the Commission should not adopt subscribership milestones, and providing extensive evidence against such a requirement.

A. Subscribership Milestones are Bad Policy

Wireline incumbents and cable companies, established providers and new entrants, all find common ground with WISPA that subscribership milestones would be a massive departure for the program and would impose an unfair requirement. GeoLinks and USTelecom agree with WISPA that a subscribership milestone conflates *deployment*, which has long been the goal of the high-cost program and is within the control of recipients, with *adoption*, which cannot be controlled by the support recipient and is in any event supported by other programs.[59] Wireline and cable companies and their trade associations highlighted the difficulty of a recipient influencing adoption, stating that 70 percent would be difficult to meet,[60] and that providers are "challenged to drive high penetration rates in CAF II areas."[61] As noted above, USTelecom

[59] Comments of California Internet, L.P. dba GeoLinks, WC Docket Nos. 19-126 & 10-90 (filed Sept. 20, 2019) ("GeoLinks Comments") at 6 (using similar terms "subscription" and "availability"); Comments of USTelecom at 36.

[60] ACA Comments at 17.

[61] CenturyLink at 19.

objected to a subscribership milestone because actual adoption rates of 25/3 Mbps service range from 23.1 percent to 57.7 percent, and 100/20 Mbps drops to 10 percent to 25 percent.[62] WTA, though it curiously supports an unspecified milestone lower than 70 percent, comprehensively describes the difficulty faced by support recipients:

> No matter how much Rural [local exchange carriers] extend the reach, speed and quality of their broadband networks and no matter how frequently and persuasively they advertise their broadband services, many potential customers will not take service for a variety of reasons. As the rural adage goes, "you can lead a horse to water, but you can't make it drink." No matter what they may do to deploy, operate and advertise their broadband services, WTA members do not believe that they have significant control over the adoption rates for their broadband services.[63]

When taken together with USTelecom's evidence of take rates and other providers' concerns, WTA's characterization of the difficulties faced by support recipients in driving adoption rates is best read as providing strong evidence *against any* milestone, rather than support for a milestone at a lower level. When both new entrants and well-established wireline and cable companies object to subscribership milestones, these objections are unlikely to be motivated by a desire to game the system or obtain some sort of unfair advantage: these objections reflect that providers across the country believe the proposal would impose a fundamentally unfair requirement.[64]

Commenters also point out that a subscribership milestone is likely to have a severe negative impact on program participation and the market for broadband services. USTelecom states that such a requirement would not just "dampen participation, but drive otherwise willing

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[62] *See infra* Section I.A; USTelecom Comments at 37-38.

[63] WTA Comments at 21.

[64] For other objections to the subscribership milestone requirement, *see* US Cellular Comments at 9; NCTA Comments at 7; ITTA Comments at 23-26; NRECA Comments at 15; Sacred Wind Comments at 8.

bidders out of the auction altogether."[65] Race Telecommunications points out that a subscribership milestone could have a disproportionate impact on exactly the areas the Commission wants to reach, stating that it "may discourage prospective providers from bidding . . . particularly in unserved areas or very remote or Tribal areas where broadband awareness and income levels may be low."[66] And CenturyLink states that "such a requirement could preclude CenturyLink's participation in the program."[67] US Cellular points to broader impacts:

> the Commission would be mandating a business strategy that pushes carriers to lower prices if they are not successful at attracting customers perhaps to below-market or even below break-even levels in order to avoid a penalty. The Commission's proposed penalty is bound to distort the marketplace.[68]

B. Supporters of Subscribership Milestones Fail to Explain the Practical or Legal Basis for Such a Requirement

To be sure, and as noted above, some commenters do not object to a subscribership milestone outright, but instead support a milestone set at some lower level, usually around 35 to 40 percent.[69] Most of these commenters, like WTA, provide substantial objections to holding recipients responsible for adoption rates that would equally support having no subscribership milestone at all.[70] This is particularly apparent given that none of these commenters provide any study, economic or otherwise, to justify their proposed milestones, appearing to just pick their

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[65] USTelecom Comments at 37.

[66] Comments of Race Telecommunications, WC Docket Nos. 19-126 & 10-90 (filed Sept. 20, 2019) ("Race Comments") at 11-12.

[67] CenturyLink Comments at 20.

[68] US Cellular Comments at 9.

[69] *See* NTCA Comments at v, 27-30 (35 percent); WTA Comments at 21 (unspecified); BHRC at 3 (40 percent); ACA Comments at 16-18 (35 percent); UTC Comments at 11-12 (40 percent).

[70] *See* NTCA Comments at 28 (70 percent "is unachievable for even the most well-intentioned and aggressively marketing provider"); WTA Comments at 21 (quoted above); ACA Comments at 17.

numbers out of a hat. They may provide the Commission with cogent objections to a 70 percent milestone, but fail to provide a cogent reason for any lesser milestone.[71] Likewise, none of these commenters provides the slightest legal argument as to how such a requirement – at any level – would be allowed under Section 254 of the Communications Act, as amended ("Act"). As WISPA established in its Comments, Section 254 limits the use for support to "the provision, maintenance, and upgrading of facilities and services for which the support is intended," and a requirement to achieve some specific subscribership level would contravene this requirement."[72] If there are arguments that such a requirement is consistent with the Act, then commenters supporting arbitrarily chosen subscribership milestones did not provide them.

C. Subscribership Milestones are Not Necessary

The *NPRM* couched the need for a subscribership milestone to address the possibility that recipients may choose to stop pursuing new customers should capacity requirements increase.[73] Consistent with their failure to justify their proposed milestones, supporters of subscribership milestones failed to provide any argument validating the Commission's concerns, or explaining how the subscribership milestone would provide some additional protection not already provided by the Commission's existing deployment obligations and service requirements.

Commenters opposing subscribership milestones clearly explained that multiple Commission requirements provide adequate protection against any possibility that recipients will shortchange customers in their service areas. GeoLinks explained that CAF II recipients must

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[71] The two commenters that support the 70 percent milestone as proposed simply state their support and do not provide any policy, legal or other argument for the milestone. *See* WVBEC Comments at 13; MCN Comments at 5.

[72] WISPA Comments at 21 (quoting 47 U.S.C. §254(d)).

[73] *NPRM* at 6791, ¶ 40.

already engineer their networks so that they are robust enough to support a 70 percent subscriber rate.[74] As both CenturyLink and NRECA point out, support recipients have every incentive to sell service,[75] and recipients will not spend the money to add the necessary capacity to support a 70 percent subscribership rate and then decide to stop seeking new customers to recover that investment. Moreover, GeoLinks, USTelecom and CenturyLink all note that recipients must market throughout their areas, making it impossible for a recipient to somehow hide the availability of broadband service from unserved customers.[76] Finally, commenters pointed to the requirement that a recipient must be able to install at a customer location within 10 business days of a request.[77]

The record thus shows that it is unlikely in the extreme that a recipient complying with network engineering, marketing and service provision requirements will find itself able or willing, in any significant way, to limit subscribership. ITTA puts it another way: "[C]oncerns about wireline bidders gaming the RDOF in the suggested manner blow past 'theoretical' to the doorstep of paranoid."[78] WISPA believes this sentiment applies even more clearly to fixed wireless providers. In many cases, WISPs started providing broadband service because existing providers failed to do so. They are usually run by small business owners that provide service to a few hundred customers who are their neighbors. The theoretical possibility that such an owner would intentionally restrict capacity and decline to extend service to his or her neighbors is just that: an extremely remote theoretical possibility that flies in the face of every business and social

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[74] GeoLinks Comments at 7-8.

[75] CenturyLink Comments at 17; NRECA Comments at 15.

[76] GeoLinks Comments at 7-8; USTelecom Comments at 40; CenturyLink Comments at 20.

[77] GeoLinks Comments at 7-8; USTelecom Comments at 40.

[78] ITTA Comments at 25.

incentive WISPs have, not to mention the very real network engineering, marketing and service requirements enforceable by the Commission.

VI. THE RECORD OVERWHELMINGLY FAVORS ALTERNATIVES TO LETTERS OF CREDIT

The record also shows that parties strongly favor alternatives to LOCs, with the breadth and depth of this advocacy exceeding even the consensus against the proposed subscribership milestones. Indeed, a survey of the record shows that, while parties agree that the Commission needs mechanisms to ensure the security of allocated funds, almost every party to address the issue believes that (1) the LOC structure far exceeds its benefits and will impose a huge cost on the fund that could better be used for network deployment, and (2) numerous alternatives exist that would provide at least as much security.[79] Only two parties in the proceeding supported continuing the LOC requirements without change: UTC, which simply stated so without support or argument,[80] and the Muscogee (Creek) Nation, which supported the LOC requirement but also acknowledged the difficulty of meeting it by suggesting that the Commission expand the waiver policy currently applicable to Tribal bidders to "all applicants who may not have the ability or find the letter of credit too large of an administrative burden to otherwise effectively implement the goals of the RDOF support."[81] In light of the weight of the evidence in the record, the Commission should modify its LOC requirements to permit the modified processes and

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[79] *See* USTelecom Comments at 44; ITTA Comments at 15; NCTA Comments at 9; NRECA Comments at 15; CenturyLink Comments at 10-13; Windstream Comments at 4, 17-18; GeoLinks Comments at 12; Comments of @Link Services, LLC, WC Docket Nos. 19-126 & 10-90 (filed Sept. 19, 2019) ("@Link Comments") at 2; Race Comments at 3-4; Comments of the Surety & Fidelity Ass'n of America and the Nat'l Ass'n of Surety Bond Producers, WC Docket Nos. 19-126 & 10-90 (filed Sept. 20, 2019) ("SFAA/NASBP Comments") at 1-2.

[80] UTC Comments at 19-20.

[81] MCN Comments at 12.

requirements suggested by WISPA and the overwhelming majority of other parties commenting in this proceeding.

A. The Record Shows that the Cost of LOCs as Structured Far Exceeds their Benefits

Numerous parties submitted evidence showing exactly how the costs of LOCs can quickly expand to unfeasible levels. Parties submitted evidence of their own experience with pricing of LOCs, stating that it can amount to an annual fee, under the best circumstances, of anywhere from 2 to 4 percent or sometimes far more.[82] As WISPA stated, the experience of some CAF II recipients indicates that the cost of a LOC to cover the total obligation required under the Commission's rules can approach 10 percent.[83] Moreover, the Commission requires that the value of LOCs increase to cover all funds previously disbursed and to be disbursed over the coming year, with reductions only applying once the recipient starts to meet specific milestones: as Windstream explains, "they must cover three-to-four times a provider's annual support amounts at their most expensive point."[84] In other words, the issuing bank's financial exposure increases over time as buildout milestones are met, a result that runs counter to the better policy of reducing exposure based on satisfactory performance.

Parties showed that this compounding effect will result in huge amounts of program funds being used for LOC fees. USTelecom calculates that a recipient of $100 million per year could end up spending 7.5 percent of the total amount received in banking fees.[85] USTelecom

[82] @Link Comments at 4 (1.55 to 2.75 percent); GeoLinks Comments at 9 (3 percent at the "low end"); USTelecom Comments at 44 (3 percent); Windstream Comments at 18 (2 to 3 percent and "sometimes far more"); CenturyLink Comments at 12 (2 to 4 percent).

[83] WISPA Comments at 36.

[84] Windstream Comments at 17-18.

[85] USTelecom Comments at 44.

then estimates that, over the entire program, $1.2 billion of a $16 billion RDOF budget would be spent on banking fees.[86] CenturyLink arrives at similar amounts, calculating that at a conservative estimate of a 2.5 percent annual fee, total LOC fees will amount to over $1 billion, accounting for 6 percent of the total RDOF budget and an incredible 10 percent of the budget for funding years four through seven.[87] Windstream summarizes the likely impact of expenses of this order of magnitude by stating that "bidders are likely to account for these expenses in their bids. Put another way, letters of credit may be paid for by the Fund, reducing the funds available for actual deployment."[88] NCTA agrees, stating that as a result of the extreme costs of the LOC requirements, "fewer bidders participate and areas remain unserved, or support is awarded in greater amounts than would otherwise be necessary."[89]

GeoLinks, drawing from its experience as a CAF II auction winner, explained the impact of such compounding on individual recipients, pointing out that the growth of the LOC requirement can quickly outpace the recipient's lending ability with its bank.[90] By years three and four, a recipient may need to go to multiple banks to cover its total requirement, though doing so may prove impossible given that most banks will impose first lien requirements as a condition of issuing the LOC.[91] ITTA raises other negative impacts on recipients, stating that

[86] *Id.* at 45.

[87] CenturyLink Comments at 13-14.

[88] Windstream Comments at 18.

[89] NCTA Comments at 9.

[90] GeoLinks Comments at 10.

[91] *Id.* at 10-11.

LOCs "are factored into debt-cash ratios when an entity seeks financing, leading to a double-whammy of a higher cost of debt.[92]

@Link echoed all of these concerns by providing a detailed description of the expense and difficulties it faced obtaining a sufficient LOC to comply with the Commission's CAF II auction requirements, including high rates, increased lending costs, collateral issues, needing to pay off an existing Rural Utilities Service ("RUS") loan, and then needing to negotiate an intercreditor agreement between @Link's bank and RUS.[93] @Link's story shows that high fees alone impose burdens that are particularly unreasonable for smaller recipients, especially when added to the legal costs, time and resources necessary to resolve the numerous administrative steps to obtain LOCs given other recipient obligations.[94]

As a result, it is not surprising that many commenters agree with USTelecom's conclusion that "[t]he costs of the device far outweigh its benefits"[95] and CenturyLink's conclusion that the LOC requirements "are almost incomprehensibly excessive." CenturyLink succinctly explains why:

> [I]t is inconceivable that the Commission will ever have the need to recover $1 billion in RDOF payments. In fact, it is highly unlikely that even one-tenth of that amount will actually be at risk. In which case, the NPRM's [LOC] proposal will be a gigantic waste of money and the public interest would be far better served to have no [LOCs] at all.[96]

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[92] ITTA Comments at 15.

[93] @Link Comments at 2-4, 6.

[94] *See also* GeoLinks Comments at 11 (showing that the LOC requirement disproportionately impacts small and medium providers).

[95] USTelecom Comments at 44.

[96] CenturyLink Comments at 14.

None of these parties believes that the Commission should not have some mechanism to secure the funds received by winning bidders: obviously, the willingness of the Commission to devote over $20 billion to broadband deployment hinges in large part on having reasonable mechanisms to ensure that the funds in fact result in more broadband deployment. The point WISPA and these commenters have made, and provided substantial record evidence to support, is that the LOC as currently structured imposes unreasonable costs on the recipients, and ultimately on the program, that are entirely untethered to the risk of non-performance. CenturyLink accurately points out that in past programs the Commission has rejected performance bonds, escrow instruments and other alternatives to LOCs, but only after considering the relative benefits of different alternatives and not after considering the relative costs of those alternatives.[97] The broad consensus of commenters on this record shows that the Commission must consider the costs of LOCs, and modify these requirements accordingly.

B. Numerous Alternatives Exist that Would Provide at Least as Much Security

WISPA explained in its Comments that performance bonds offer substantial cost savings compared to LOCs, as well as additional assurance of performance as a result of surety prequalification.[98] WISPA also outlined additional specific requirements for performance bonds that the Commission could require, including requiring immediate payment in the event of default, to enhance these instruments for use in the RDOF program.[99] The Surety & Fidelity Association of America and the National Association of Surety Bond Producers agree, stating that LOCs "[do] not provide the same financial guarantee to the government" because

[97] *Id.* at 12.

[98] *See* WISPA Comments at 34-36.

[99] *Id.* at 36-38.

performance bonds (1) assure the recipient is not only financially but also technically qualified to perform the obligations through prequalification, which provides an additional layer of review that benefits the Commission, and (2) obligate the surety to make sure the work is finished, something a bank issuing an LOC is not obligated to do.[100]

Parties have filled the record with various proposals to improve the cost-benefit balance of providing sufficient security to the Commission. In addition to WISPA's proposal for performance bonds, USTelecom and Windstream suggest that recipients could place amounts in escrow to be drawn down when reaching their first milestone.[101] Parties also propose various modifications to the LOC requirement:

- @Link requests that the Commission develop coordinated policies or agreements with the U.S. Department of Agriculture ("USDA") to make RUS intercreditor agreements and other arrangements easier and faster to obtain.[102]
- GeoLinks proposes that if the recipient meets yearly buildout targets of 17 percent (1/6 of the amount received for each of the first six year), the amount of the LOC would not increase but would remain at the level of the funding disbursed that year.[103]
- ITTA makes a slightly different proposal to limit the amount of the LOC to no more than two years of funding and to reduce the amount to one year after meeting the first milestone.[104]

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[100] SFAA/NASBP Comments at 2.

[101] USTelecom Comments at 46; Windstream Comments at 19-20.

[102] @Links Comments at 6.

[103] Geolinks Comments at 14.

[104] ITTA Comments at 17-18.

- CenturyLink similarly proposes that that the LOC should never cover more funding than would be at risk should the recipient cease deploying its network, meaning that the LOC would be Commission would be limited to two years' annual funding and thus that recipients should be allowed a 20 percent deployment verification after years one and two.[105]
- USTelecom would allow the amount of the LOC to increase, but allow a recipient to reduce the amount to half of what would otherwise be required after meeting the first two milestones.[106]

WISPA believes that the best way forward for the Commission would be to take the best common aspects of these proposals in order to tailor its security requirements more closely to the actual risk of non-performance. WISPA recommends that the Commission:

- allow recipients to use a performance bond instead of an LOC, conditioned as proposed by WISPA in its Comments;
- commit to working out a Memorandum of Understanding with USDA and RUS to coordinate credit policies before it conducts Phase I of the RDOF auction;
- allow a recipient to maintain the same level of LOC or bond funding if it reports that it is meeting yearly targets in year one of 17 percent and year two of 34 percent, and then meets its service milestones as proposed by the Commission; and
- if a recipient does not meet the year one or two targets, the LOC or bond funding requirement would be limited to two years, and then one year after meeting the first milestone.

[105] CenturyLink Comments at 15-16.

[106] USTelecom Comments at 46.

By modifying its requirements in this way, the Commission will better tailor its security requirements to the actual amounts at risk, meet its goal of broadening participation by smaller entities that might otherwise be dissuaded from bidding, and avoid spending $1 billion on banking fees. While all parties agree that the Commission's requirements should provide sufficient security to protect the Commission's role as a steward of public funds, the experience of the CAF II auction and the extensive record generated in this proceeding convincingly demonstrates the need for the Commission to allow performance bonds as an alternative and to modify its compounding requirements.

VII. THE COMMISSION SHOULD NOT COMPLICATE THE SHORT-FORM APPLICATION PROCESS WITHOUT DEMONSTRATED NEED, WHICH IS LACKING IN THE RECORD

The Commission asked whether it should require less information from existing CAF II qualified bidders during the short-form application process, clearly evidencing an interest in streamlining its regulatory requirements if possible to address the larger number of applicants expected to apply for RDOF support.[107] Several commenters, however, instead suggested *increasing* short-form application requirements. USTelecom wants bidders to provide more information about whether a bidder has the employees or expertise to scale its network, subscribership trends and current network capabilities.[108] NRECA seeks to shift requirements from the long-form to the short-form (although it does not say exactly which ones) to ensure that "only competent, qualified entities utilizing proven technologies participate in both the Phase I

[107] As WISPA explained in its comments, the short-form application process was appropriately crafted and WISPA does not take a specific position for or against further streamlining. *See* WISPA Comments at 32-33.

[108] USTelecom Comments at 19-20.

and the Phase II auction."[109] Neither of these proposals, however, point to any evidence that the CAF II auction process resulted in unqualified entities receiving funding or any other negative effects justifying more burdensome application requirements. Nor do they consider the increased burdens on Commission staff to review more detailed short-form information from a larger number of anticipated bidders. Given the interests such additional requirements would serve are defined nebulously at best, these proposals are appropriately viewed as simply raising the cost of doing business for smaller competitors and the Commission should reject them.

NTCA's short-form proposal falls into the same category of unjustified hurdle-raising as the USTelecom and NRECA proposals, but is so blatantly anti-competitive as to warrant special attention. NTCA proposes that the Commission require bidders (properly read as "fixed wireless bidders") to submit with their short-form application propagation maps and technical showings to support coverage to all parts of proposed service areas and to flag future spectrum assets to be used with contingency plans.[110] Not only does NTCA propose incredibly burdensome requirements that cut directly against the Commission's expressed policy preference to streamline requirements, but NTCA fails to mention that these same proposals were made by NTCA and others during the CAF II auction process and were summarily rejected by the Commission.[111] At that time, the Commission held that requiring propagation maps and other showings for every possible area where an applicant might bid was unduly burdensome,

[109] NRECA Comments at 13.

[110] NTCA Comments at 23-26.

[111] *See* Public Notice, *Connect America Fund, et al.,* 33 FCC Rcd 1428, 1455-57, ¶¶ 76-77 (2018) ("*CAF Procedures Public Notice*"). Oddly, NTCA supports its argument here by citing an *ex parte* letter filed during the CAF II auction proceeding, without noting the Commission's ultimate rejection of that proposal. NTCA Comments at 26 n.45 (citing *Ex Parte* Letter from Rebekah Goodheart et al., Rural Coalition, to Marlene H. Dortch, FCC Secretary, WC Docket No. 10-90 (filed Nov. 21, 2017)).

would require extensive pre-auction review by Commission staff that would likely delay the beginning of the auction, and was in any event unnecessary given the certifications already required by the Commission.[112] Nor did the Commission impose the overly burdensome requirements proposed by NTCA regarding spectrum assets to be used,[113] and NTCA provides no convincing arguments as to why the Commission should now change the disclosures that worked well for the CAF II auction.

Notably, given that it already submitted all these arguments and could reasonably anticipate the responses it would receive, NTCA says nothing about whether it would be willing to take up WISPA's offer, made during the CAF II auction proceeding, that wireline bidders also submit network maps showing their ability to serve customer locations.[114] Of course, the Commission rejected that proposal, too,[115] as Commission staff should not be forced to spend thousands of pre-auction hours combing through overly excessive short-form applications, the majority of which will not result in successful bids anyway, in order to provide yet another safeguard against noncompliance already addressed by its own compliance measures. As the Commission already discerned, NTCA's proposals are not intended to improve the auction process: they are intended to raise barriers to participation by fixed wireless providers and should be rejected as such.

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[112] *CAF Procedures Public Notice* at 1455-56, ¶ 76 & n.153.

[113] *See id.* at 1461-64, ¶¶ 86-95.

[114] Reply Comments of The Wireless Internet Service Providers Association, AU Docket No. 17-182, WC Docket No. 10-90 (filed Oct. 18, 2017).]

[115] *CAF Procedures Public Notice* at 1456, ¶ 76.

VIII. THE COMMISSION SHOULD ELIMINATE THE STANDALONE VOICE REQUIREMENT

While two commenters stated that they wanted the Commission to retain the standalone voice requirement, they did not provide any evidence that the requirement serves any purpose or otherwise support their statement with any specific arguments.[116] Commenters addressing the substance of the issue agreed with WISPA that the standalone voice requirement should be eliminated. GeoLinks does not object to making voice available as part of a bundle, but explains that the Commission should no longer require winning bidders to incur the costs of standalone voice.[117] Similarly, SpaceX made clear that it did not oppose the requirement that customers have access to voice telephony "in combination with broadband," but showed that standalone voice is no longer useful by pointing to the Commission's own data from 2017 showing that switched access lines constitute less than 10.9 percent of all retail voice lines, and today likely constitute 8.8 percent.[118]

A group of commenters led by the National Association of Counties argued that the standalone voice requirement "would prevent willing and able entities from providing high-speed broadband services solely because they do not provide voice services" and proposed that the Commission allow broadband-only providers to bid.[119] While WISPA agrees with requiring

[116] *See* Comments of the California Emerging Technology Fund, WC Docket Nos. 19-126 & 10-90 (filed Sept. 20, 2019) at 12; Comments of Illinois Dept. of Innovation & Technology, WC Docket Nos. 19-126 & 10-90 (filed Sept. 20, 2019) at 8.

[117] GeoLinks Comments at 8.

[118] SpaceX Comments at 4-5; *see also* Comments of Pacific Dataport, Inc., WC Docket Nos. 19-126 & 10-90 (filed Sept. 20, 2019) at 14.

[119] NAC Comments at 2.

a voice component as part of a combined service offering,[120] this reasoning is exactly why the Commission should eliminate the standalone requirement: it serves no purpose to justify the burden it continues to place on support recipients, while potentially reducing competition in the auction from alternative providers.

IX. THE COMMISSION SHOULD REJECT NUMEROUS OTHER PROPOSALS INTENDED TO UNFAIRLY ADVANTAGE INCUMBENT WIRELINE PROVIDERS OR UNDERMINE THE BENEFITS THE PROGRAM

Commenters have inundated the Commission with various proposals going to every aspect of the Commission's auction process, many of which either suggest solutions to non-existent problems or depart for no explained reason from sound CAF II auction procedures, or both. The Commission has enough that it needs to do in this proceeding and, absent compelling argument or evidence to the contrary, should reject them in favor of its proven auction processes.

A. Limiting Bidding to Annual Revenues is Unnecessary and Anti-Competitive

USTelecom and Windstream propose limiting bidding to the bidder's annual revenues.[121] They offer no arguments as to why the Commission should apply such a restrictive measure now when it did not in the CAF II auction. Rather, they believe it necessary to impose more restrictions because of the rather vaguely expressed and speculative fear that bidders "may not follow through with actual deployment."[122] While the Commission obviously must have mechanisms in place to protect against a failure to meet deployment obligations, USTelecom

[120] If the Commission is to require a voice component as part of a combined service offering, it should confirm that VoIP is sufficient to satisfy this requirement, consistent with past decisions. *See* WISPA Comments at 11.

[121] USTelecom Comments at 19-20; Windstream Comments at 20.

[122] Windstream Comments at 19.

and Windstream ignore the fact that multiple such mechanisms already exist, from the substantial screening already applied by the short- and long-form application processes, to reporting requirements, to reduction of support, to LOCs (as proposed to be modified by WISPA and many others) and forfeiture penalties. In light of these protections, USTelecom and Windstream's proposal is not any kind of reasonable response to an actual risk, but instead a skyhook to add to the belt and suspenders the Commission already has.

Applying this anti-competitive measure would be particularly short-sighted in light of the decade-long span of the program, during which time it can reasonably be expected that smaller bidders' revenue might increase substantially. Constraining bidders' activity in the auction to a snapshot of current revenue, then, is not warranted by current conditions and, if adopted, would prove itself increasingly absurd over time. Having successfully attracted competitive providers to the CAF II auction, the Commission should decline this invitation to now adopt measures that would act only to discriminate against them.

B. The Commission Should Retain Its Existing Coverage Requirement but Modify Its Adjustment Process

The *NPRM* proposed the same flexibility for deployment as was allowed in the CAF II auction: at least 95 percent, though the recipient is required to refund support based on the number of funded location left unserved.[123] The BHRC proposes a flat requirement of 100 percent coverage, arguing that otherwise recipients will exclude the highest cost locations.[124] This flexibility is necessary, however, not because recipients should be given a free pass, but because, as the Commission has acknowledged, unanticipated challenges may arise during the

[123] *NPRM* at 6788, ¶ 29.

[124] BHRC Comments at 10-12.

term of support.[125] As was apparent during the CAF II auction proceeding and has only become more apparent since then, locations estimated by the CAM may differ significantly from actual locations. And even with better mapping as promised by the DODC proceeding, over ten years it is entirely likely that the number and location of many locations will change. The Commission thus has a choice between spending enormous amount of effort in the future granting waivers for every location where circumstances might change, or building in a small amount of flexibility now.[126] The interest of efficiently administering the program should cause the Commission to reject BHRC's proposal and maintaining its existing policy.

On a related note, the *NPRM* proposes that if a recipient can verify that there are fewer eligible locations in the recipient's census blocks than the CAM model predicted, its deployment obligations and support would be reduced on a pro rata basis.[127] Several commenters propose that if there are fewer locations, the recipient should not be required to refund support, reasoning that recipients should not be held liable on the basis of incorrect location data given high fixed costs and the burden of determining actual locations for larger carriers.[128] WISPA supports this proposal because location data may change over time as new homes are built and others abandoned, increasing administrative burden for both recipients and the Commission, and time

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[125] *NPRM* at 6788, ¶ 29.

[126] *See, e.g.*, Petition of Allamakee-Clayton Electric Cooperative for Waiver of RBE Build-out Requirement, WC Docket Nos. 10-90 and 14-58 (filed Sept. 26, 2019) (requesting waiver of rural broadband experiment requirements based on documented overstatement of eligible "locations"); Midwest Energy Cooperative d/b/a Midwest Energy & Communications Petition for Waiver, WC Docket Nos. 10-90 and 14-58 (filed Aug. 21, 2019) (same); Petition of Consolidated Communications Networks, Inc., WC Docket Nos. 10-90, 14-58 and 07-135 and CC Docket No. 01-92 (filed Apr. 11, 2019) (same).

[127] *Id.*

[128] USTelecom Comments at 12-16; WTA Comments at 18-20; Windstream Comments at 4, 21; ITTA Comments at 11-12; CenturyLink Comments at 21-22.

and resources are better spent investing funds in network deployments to customer locations. WISPA further notes that magnitude of these inaccuracies, and thus the magnitude of funds related to inaccurate locations, will be substantially smaller should the Commission wait to conduct its auction until the DODC proceeding produces data for supported locations.[129]

C. CAF II Model-Based Recipients Should Not Receive Support After Year Seven

The *NPRM* explains that model-based support was intended to be of "limited scope and duration," and price cap carriers accepted model-based support without any expectation of "sustained ongoing support," and thus proposes that it is not necessary to provide any support beyond the optional seventh year of support in calendar year 2021.[130] Several price cap carriers and trade associations support the Commission clarifying that carriers are entitled to a full seventh year of support.[131] Some of these commenters then take the next step, however, of demanding that the Commission continue model-based support if there is no winner for an area in the RDOF auction.[132]

Although WISPA supports price cap carriers receiving the benefit of the deal they accepted by receiving a full seventh year of optional funding, WISPA agrees with the Commission that no further support beyond the seventh year is warranted and the Commission should reject these proposals to lock-in support into the indefinite future. Surely, it can be no surprise to price cap carriers if a program the Commission explicitly stated to be of limited

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[129] *See also* ITTA Comments at 11-12.

[130] *NPRM* at 6810, ¶ 102 (quoting *Connect America Fund et al.,* Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17732, ¶ 178 (2011)).

[131] *See* USTelecom Comments at 32-33; ITTA Comments at 28-31; ACA Comments at 27-28; Windstream Comments at 23; CenturyLink Comments at 2, 5-6.

[132] *See* USTelecom Comments at 30; Windstream Comments at 23-24; ITTA Comments at 28-31; Comments of Alaska Communications, WC Docket Nos. 19-126 & 10-90 (filed Sept. 20, 2019) at 10.

scope and duration eight years ago in fact turns out to be of limited scope and duration. In setting up CAF Phase II, the Commission gave price cap carriers a choice of accepting model-based support for deployment for a specified period of time, or participating in an auction and competing for support for deployment for a specified period of time. The Commission did not give carriers a choice of accepting model-based support and then possibly getting it forever or participating in an auction. Rewriting the bargain as suggested by these commenters would utterly undermine the long-standing intent of the Commission to transition wholly to market-based, efficient means of providing support for broadband service. The Commission should thus proceed as proposed and reject any attempts by price cap carriers to rewrite their bargain.

D. The Commission Should Not Import Extraneous Support or Adoption Requirements into the Auction

The SHLB Coalition and the Institute for Local Self-Reliance propose that the RDOF auction incorporate required provision of service to anchor institutions, while the California Public Utilities Commission proposes that recipients offer low income broadband plans to improve affordability.[133] The Commission has not incorporated these types of requirements into high cost programs to date because these programs focus on supporting network deployment to residential and small business customers. Other federal programs such as the Schools and Libraries, Rural Health Care and Lifeline programs focus on providing broadband to anchor institutions and low income customers. Importing institutional service and individual subsidy requirements into the RDOF program would run counter to longstanding, bipartisan consensus on the goals and limits of the high cost program and complicate the auction and compliance process for recipients.

[133] *See* Comments of The SHLB Coalition, WC Docket Nos. 19-126 & 10-90 (filed Sept. 20, 2019) at 7; ILSR Comments at 1; CA PUC Comments at 4-5.

E. The Commission Must Limit the New York Auction Approach to a One-Time Event

The California Public Utilities Commission also proposes that the Commission extend the waiver of the CAF II auction rules granted to New York State to allow other states to allocate federal high cost support pursuant to their own proceedings.[134] The Commission must reject this proposal. None of the circumstances of the New York petition or conditions relied upon by the Commission to grant the waiver apply indiscriminately to the rest of the states. The money the Commission released to New York consisted of model-based funds declined by Verizon.[135] While this money was clearly derived from ratepayers across the country, it at least had an arguable nexus to service provided in New York, and was limited to the amount declined by Verizon. By contrast, this proposal would have the Commission use ratepayer dollars from across the nation to write the states a blank check to support whatever result the states may obtain through their allocation proceeding. Moreover, the Commission specifically found that a waiver was warranted because (1) New York was "uniquely" positioned to advance the Commission's goal of advancing broadband deployment quickly and efficiently because it was pursuing its own aggressively timed support program, and (2) the waiver advanced the public interest by promoting rapid deployment and coordinating New York state support with CAF II auction support.[136] The Commission made clear that the grant of the waiver was a highly fact-specific analysis and that it would only consider other states in the context of other waiver petitions.[137] Notably, the Commission rejected the efforts of Pennsylvania and Massachusetts to

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[134] CA PUC Comments at 5-7; *see also Connect America Fund et al.,* Order, 32 FCC Rcd 968 (2017).

[135] *Id.* at 971-72, ¶ 11.

[136] *Id.* at 5-14.

[137] *Id.* at 13-14, ¶ 32.

direct CAF II support to those states, finding that they had not "demonstrated that they have adopted a similar program that would achieve the same or similar public interest benefits."[138] And, of course, states ae free to establish, implement and administer their own broadband subsidy programs, and many have. Here, the California Public Utilities Commission has made no showing that the Commission abdicating its responsibility in favor of state processes would advance the Commission's policy goals. In all likelihood, deferring to multiple different states with their own processes and timeframes would vastly complicate an already complex process, and inevitably result in delay.

Conclusion

The extensive record already generated in this proceeding shows widespread support for many of the basic features of the Commission's proposed auction structure, but also includes an array of very specific proposals covering almost every aspect of the RDOF auction. WISPA agrees with numerous other commenters that it would be best for the Commission to wait to commence Phase I of RDOF until better location data is available, or in the alternative hold a series of sequential auctions that prioritize wholly unserved areas. WISPA also agrees with the majority of commenters in the proceeding that favor retaining census block groups as the geographic unit for the auction, oppose the unnecessary addition of a subscribership milestone to the Commission's deployment obligations, and propose numerous alternatives to the Commission's proposed LOC requirements. The Commission should also, consistent with WISPA's proposal, eliminate the standalone voice requirement. These proposals, if adopted by

[138] *Connect America Fund et al.*, Report and Order and Order on Reconsideration, 32 FCC Rcd 1624, 1644, ¶ 50 (2017).

the Commission, would undoubtedly advance the Commission's goals of efficiently providing support to as many Americans as the program's budget allows.

The Commission should decline, however, to make significant changes to the auction process that would only serve to make it more difficult for bidders using different technologies to compete. Commenters support such proposals by submitting misleading information about fixed wireless and other technologies, for the purpose of trying to persuade the Commission to enact industrial policy completely contrary to anything it considered or adopted in the CAF II auction. WISPA supports adding a new 50/5 Mbps tier and retaining the overall range of weights, but the Commission should reject other proposals that seek to impose absurdly high weights that would only serve to eliminate Baseline and Above Baseline services from the auction, or apply bid resolution rules that would eliminate competition in huge numbers of census blocks. The Commission should also reject proposals to increase substantially the information spectrum users are required to submit in the short-form application, consistent with how it reasonably rejected such unnecessary proposals in the CAF II auction. Similarly, the Commission should reject proposals to limit bidding to annual revenues. All of these proposals disproportionately target fixed wireless and smaller carriers, and cut directly against the Commission's successful policy of encouraging broad participation.

Finally, the Commission should reject various miscellaneous proposals that would depart from the existing CAF II auction process for no significant benefit. The Commission should not increase the coverage requirement to 100 percent, should refuse to extend model-based support past year seven, should decline to import anchor institution or affordability requirements in RDOF, and should reject any proposal to hand the RDOF auction over to multiple different state proceedings.

Respectfully submitted,

WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION

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