

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of Rural Digital Opportunity
Fund; Connect America Fund

WC Docket No. 19-126

WC Docket No. 10-90

**REPLY COMMENTS OF THE
CALIFORNIA PUBLIC UTILITIES COMMISSION**

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I. INTRODUCTION

The California Public Utilities Commission (CPUC) respectfully submits these reply comments in response to the Federal Communications Commission's (FCC or Commission) *Notice of Proposed Rulemaking (NPRM)* issued August 2, 2019, in the above-captioned dockets.¹ In the *NPRM*, the FCC sought comments on establishing the Rural Digital Opportunity Fund (RDOF) to subsidize broadband telecommunications networks in defined rural areas of the United States.

These reply comments focus on two issues the CPUC addressed and with which other commenters agreed: 1) improving the broadband data collection and developing better broadband coverage maps before launching the RDOF; and, 2) integrating the federal-state partnership in the RDOF by allowing states the option to pursue RDOF funding.²

These reply comments are limited in scope. Silence with respect to any party's comments should not be construed as agreement or disagreement.

¹ *In the Matter of Rural Digital Opportunity Fund; Connect America Fund, Notice of Proposed Rulemaking*, WC Docket Nos. 10-90, 19-126 (rel. August 2, 2019) (*NPRM*).

² Comments of the California Public Utilities Commission, *In the Matter of Rural Digital Opportunity Fund; Connect America Fund*, WC Docket Nos. 19-195, 10-90, (filed September 20, 2019) (CPUC Comments).

II. DISCUSSION

A. Commenters Agree that the FCC Must Implement New Regulations for Broadband Data Collection and Mapping Prior to Allocating RDOF Funds.

The CPUC applauds the FCC’s efforts to modernize and improve broadband data collection and broadband coverage mapping in the current Digital Opportunity Data Collection (DODC) proceeding,³ in which the CPUC has also issued comments.⁴ However, the RDOF *NPRM* proposes to allocate at least \$16 billion in Phase 1 using broadband availability data collected prior to implementing data collection improvements.⁵ The CPUC is joined by other commenters, government and industry alike, in advising that the FCC should not do this. These commenters expressed concern that broadband data collection and mapping inaccuracies will hinder the cost effectiveness and basic fairness of the RDOF program.⁶ These comments focus on the highly problematic nature of using inaccurate data to guide how and where RDOF funds are to be allocated across the nation.

For example, the State of Maine ConnectME Authority and the Maine Broadband Coalition (MBC) quantified “that at least 21,000 rural Maine unserved homes or

³ *In the Matter of Establishing the Digital Opportunity Data Collection*, WC Docket No. 19-195, and *Modernizing the FCC Form 477 Data Program*, WC Docket No. 11-10 (rel. August 6, 2019).

⁴ Comments of the California Public Utilities Commission, *In the Matter of Establishing the Digital Opportunity Data Collection*, WC Docket No. 19-195, and *Modernizing the FCC Form 477 Data Program*, WC Docket No. 11-10 (filed September 24, 2019).

⁵ *NPRM* at ¶ 45.

⁶ For example, joint comments of the National Association of Counties, the National Association of Development Organizations, and the Rural Community Assistance Partnership (Joint Comments) requested the FCC “enact substantive changes to the underlying data collection process prior to Phase I of the Rural Opportunity Fund to ensure these dollars are property leveraged throughout communities in most need.” See Joint Comments at pp. 1 – 2.

businesses would not be eligible for RDOF support”⁷ if the FCC moves ahead with the RDOF without reforming the broadband data and mapping processes. ConnectME and MBC’s comments show that California is not the only state that would be negatively affected by flawed broadband availability data. Like Maine, the CPUC also quantified in its comments the impact of distributing RDOF funding without reforming broadband availability data collection and mapping, noting that more than 300,000 Californians could be missed.⁸

In the same vein, three agencies of the Commonwealth of Pennsylvania commented as follows:

In order to effectively address the rural digital divide issue, the Commission needs to have accurate and complete information as to where broadband service is and is not available in the United States. However, as of now, it does not have such information as the current Form 477 process and the maps it is relying on to distribute \$20.4 billion dollars of federal high-cost support from the Connect America Fund (CAF) do not give the Commission an accurate picture of where broadband is and is not.⁹

Wireless carrier United States Cellular Corporation (USCC) commented on the same issue, stating:

The overstated coverage data submitted by service providers in their FCC Form 477 filings virtually guarantees that there will be numerous rural communities that are currently unserved by broadband networks, but that will be ineligible

⁷ State of Maine ConnectME Authority and the Maine Broadband Coalition Comments at p. 2 (Maine Comments).

⁸ CPUC Comments at p. 4.

⁹ Pennsylvania Public Utility Commission, Office of Consumer Advocate, and the Office of Small Business Advocate Joint Comments at p. 3 (Pennsylvania Joint Comments).

for any RDOF support, because the flawed FCC Form 477 coverage maps incorrectly show that they already have access to broadband services.¹⁰

USCC draws the same conclusion as the CPUC, urging the FCC to “fix the broadband mapping first, and then proceed with the RDOF auction.”¹¹

The FCC should acknowledge the concerns of these comments and not move forward with distributing \$16 billion of ratepayers’ monies before fixing the process of broadband data collection and developing better broadband coverage maps. The FCC should not rush to hold the Phase 1 auction without first obtaining more accurate data. Doing so will leave gaps that will need to be addressed with more funding in the future. Allocating approximately 80% of the RDOF support in Phase 1 using faulty data is neither efficient nor fair for rural Americans that could be missed and for ratepayers that contribute to the RDOF.

B. Commenters Agree that the RDOF Program Needs to be Structured as a Federal-State Partnership.

A variety of commenters and the CPUC generally support the position that the RDOF Program should be structured as a federal-state partnership in the same way as the Universal Service Fund is such a partnership.¹² The CPUC agrees with these statements

¹⁰ United States Cellular Corporation Comments at p. 3.

¹¹ *Id.*

¹² The CPUC has identified 12 commenters that express support for integration of RDOF with state broadband programs. Commenters include: ACA Connects, California Emerging Technology Fund, Illinois Department of Innovation & Technology, National Association of Counties, National Association of Development Organizations, and Rural Community Assistance Partnership; Nebraska Public Service Commission, Pennsylvania Public Utility Commission, Office of Consumer Advocate and the Office of Small Business Advocate; State of Maine ConnectME Authority and the Main Broadband Coalition, West Virginia Broadband Enhancement Council, Mississippi Public Service Commission, Race

as a general matter, and supports the continuation of federal-state cooperation within the RDOF program seen previously in the Universal Service Fund and the Connect America Fund under authority of Section 254 of the Telecommunications Act of 1996.¹³ With full federal–state cooperation, state and federal funding together will benefit rural communities and improve investment efficiencies across all cooperating programs particularly in terms of application scheduling¹⁴ and financial leverage.¹⁵ As one commenter noted, federal-state broadband partnerships have the potential to reduce the overall burden on Universal Service Fund contributors and, ultimately, consumer ratepayers.¹⁶

The CPUC specifically recommended in comments¹⁷ that states be authorized to opt-in for a federal-state combined funding approach based on the successful program of New York State authorized by the FCC waiver in 2017.¹⁸ We believe that the ‘New York State model’ effectively answered many of the federal-state funding coordination issues

Telecommunications, Inc.; and United States Cellular Corporation.

¹³ 47 U.S.C. § 254.

¹⁴ See, e.g. Comments of Haefele TV Inc., WC Docket No. 10-90 (filed Oct. 21, 2016), quoted in Order, WC Docket No. 10-90, WC Docket No. 14-58 (New York State Order) (rel. January 26, 2017) (“As one commenter notes, if New York were to exclude Connect America Phase II eligible areas from its program to avoid overlap with the Connect America Fund Phase II auction, it would be ‘imp[ossible]’ for broadband providers to build an efficient network because the Connect America Phase II census blocks are interspersed with census blocks that are eligible for the New York Program.”).

¹⁵ See, e.g. State’s Role in Broadband Grants, Pretty Advanced New Stuff from CCG Consulting (pub. June 5, 2019) (“States that want to attract a bigger share of federal grant money can do so by increasing the annual size of the state grant awards. If a state is serious about finding broadband solutions they want to attract as much of the federal grant money as possible.”).

¹⁶ ACA Connects Comments at p. 28.

¹⁷ CPUC Comments at pp. 6-7.

¹⁸ In the Matter of Connect America Fund; ETC Annual Reports and Certifications, *Order*, WC Docket Nos. 10-90, 14-58 (FCC 17-2) (2017) (*New York Waiver Order*).

raised in the RDOF comments.¹⁹ At the same time CPUC recognizes that not all states have the capacity to implement the FCC-New York cooperative example, so we point to, and likewise support, comments that offered specific proposals or principles to facilitate better coordination with state broadband programs.

For example, the Nebraska Public Service Commission (NPSC) comments that RDOF funding phases need to be scheduled to reflect those of state broadband programs: “The NPSC is concerned that because of timing issues, RDOF support may be better targeted to areas where no support has been planned or awarded. We do not think Nebraska would be alone in this issue as there are other states that award broadband funding through state universal service programs or state general fund programs.”²⁰ Indeed, the CPUC agrees with Nebraska’s example of why RDOF should operate in greater coordination with state infrastructure grant programs as the RDOF moves forward. The CPUC stands ready to work with the FCC, and with other states to develop new cooperative approaches in this regard.

III. CONCLUSION

The CPUC appreciates this opportunity to comment on the proposed RDOF program. As stated in our comments, and as reflected in numerous other comments summarized here, the CPUC supports the creation of the RDOF, under two critically

¹⁹ See, e.g., Comments of the Illinois Department of Innovation & Technology at p. 1; Comments of the Nebraska Public Service Commission at pp. 1-3.

²⁰ Nebraska Public Service Commission Comment at p. 3.

important conditions: 1) the FCC should not open any RDOF funding rounds until and unless it orders and implements a more accurate process for broadband data and mapping; and 2) the FCC should authorize federal-state cooperation in the RDOF to take advantage of potential efficiencies from combined federal-state funds. Specifically, the FCC should allow states to opt-in to a federal-state funding partnership program for RDOF based on “the New York model” authorized by Commission waiver action of 2017.

Respectfully submitted,

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