

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

REPLY COMMENTS OF NCTA – THE INTERNET & TELEVISION ASSOCIATION

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October 21, 2019

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NCTA – The Internet & Television Association (NCTA) submits these reply comments in response to the Commission’s proposal to create the Rural Digital Opportunity Fund.¹ The Commission should not adopt incumbent local exchange carrier (LEC) proposals seeking preferential treatment or access to funding outside of the competitive bidding process. The Commission also should move quickly to distribute support and should prioritize areas that lack 10/1 Mbps broadband service over areas that have received 10/1 Mbps through the Connect America Fund.

I. REJECT INCUMBENT LEC CALLS FOR UNWARRANTED SUPPORT AND PREFERENTIAL TREATMENT

A. Do Not Extend Inefficient Incumbent LEC Right-of-First Refusal Support

Not surprisingly, the incumbent LECs that received Connect America Fund support on an uncompetitive basis now argue that they should continue to receive this support beyond the timeframe that the rules allow.² There is no public interest benefit that would justify extending

¹ *Rural Digital Opportunity Fund*, WC Docket Nos. 19-126 and 10-90, Notice of Proposed Rulemaking, FCC 19-77 (Aug. 2, 2019) (*Rural Digital Opportunity Fund NPRM*).

² Frontier Comments at 17; ITTA Comments at 29-32; USTelecom Comments at 29-30; Windstream Comments at 23-24.

the exclusive windfall amounts of funding the incumbent LECs have been receiving.³ As the Commission has stated, “Indeed, there is no statutory provision or Commission rule that provides companies with a vested right to continued receipt of support at current levels, and we are not aware of any other, independent source of law that gives particular companies an entitlement to ongoing USF support. Carriers, therefore, have no property interest in or right to continued USF support.”⁴

In adopting the Connect America Fund in 2011, the Commission decided that competitive bidding was the most efficient and effective method for distributing high-cost support.⁵ When the incumbent LECs accepted their offers of sole-sourced funding under the right of first refusal, they did so with the clear understanding that the support was available for a limited amount of time.⁶ At the expiration of that time period, the support is to be open for competitive bidding and awarded to the most efficient provider. Incumbent LECs have the opportunity to bid on this support, and because they already have received billions of dollars to deploy networks in their service areas, they should have a significant advantage in the competitive bidding process. It should be much less expensive for them to upgrade their existing facilities to provide higher speed broadband than it would be for other providers to deploy new

³ See ACA Comments at 27-28 (“The price cap carriers that accepted model-based support knew such funding was of ‘limited scope and duration.’ None of these carriers had any expectation of receiving additional funding beyond 2021.”).

⁴ *Connect America Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17771, ¶293 (2011) (*CAF Order*).

⁵ *Id.*, at 17673, ¶ 20.

⁶ *Connect America Fund*, WC Docket Nos. 10-90, 14-58, 14-192, Report and Order, 29 FCC Rcd 15644, 15656, ¶ 31 (2014) (*CAF ROFR Order*).

facilities. If other providers nonetheless are able to submit lower bids, than those more efficient providers should win the funding.

The universal service fund should benefit from the networks it has already paid to deploy by using the competitive bidding process to reduce the amount of Rural Digital Opportunity Fund support needed in these areas. There is no justification for providing additional Connect America Fund support to incumbent LECs at the level they received through the right-of-first refusal process. The accepted support amounts were tied to a specific number of broadband deployment locations for a set amount of time. As the Connect America Fund auction proved, support amounts given to the incumbent LECs through the right-of-first refusal process were too large and competitive bidding demonstrated that providers could provide broadband in high-cost areas for a significantly smaller amount of support.⁷ Therefore, the Commission should decline to extend the right-of-first refusal support beyond its adopted termination date.

Some incumbent LEC commenters imply that consumers will lose access to services if support is not continued at existing levels.⁸ There is no evidence that this will occur. These incumbent LECs have received billions of dollars to deploy broadband networks in their areas. As noted above, they can bid for any continuing support they need. To the extent incumbent LECs argue that they should continue to receive support because they have carrier of last resort obligations,⁹ these obligations are imposed by states. Any funding needed to fulfill these

⁷ *Connect America Fund Auction to Expand Broadband to Over 700,000 Rural Homes and Businesses*, FCC News Release, <https://docs.fcc.gov/public/attachments/DOC-353840A1.pdf> (Aug. 28, 2018) (“Although the 713,176 locations assigned had an initial reserve price of \$5 billion over the next decade, the final price tag to cover these locations is now only \$1.488 billion.”).

⁸ Frontier Comments at 14-19; ITTA Comments at 30-31; Windstream Comments at 23-24.

⁹ Joint RDOF Commenters Comments at 3.

requirements should come from the states that impose them, rather than from federal universal service support.

B. Incumbent LECs Should Not Receive Preferential Treatment in the Competitive Bidding Process

The Commission has correctly decided that high-cost support should be distributed through competitive bidding after the term of the incumbent LECs' right-of-first refusal support has ended.¹⁰ As discussed above, incumbent LECs received large amounts of Connect America Fund support to build networks capable of deploying 10/1 Mbps broadband¹¹ and this should provide them with a significant advantage in competitive bidding in these areas. The Commission should reject calls from some incumbent LECs to provide them with an additional bidding credit on top of their previous universal service support in the Rural Digital Opportunity Fund auction. Specifically, WTA proposes a 25 percent bidding credit as a way to "reward price cap carriers for meeting their build-out obligations under the immediately preceding CAF Phase II mechanism".¹² The \$9 billion in Connect America Fund support these providers received should be more than sufficient reward.

In support of its request for this preferential treatment, WTA asks the Commission a series of questions related to the after-effects of an incumbent LEC losing its Connect America Fund support, including:

[W]hat happens to the present broadband service arrangements of its existing customers? Are they satisfied with their present 10/1 Mbps service and service provider, and want to keep them for at least another few years? Do they want to pay more for 25/3 Mbps or faster services, and/or to use a different technology? Will they have to replace, upgrade or modify their still-functional customer premises equipment ("CPE") to use the

¹⁰ *CAF Order*, 26 FCC Rcd at 17673-74, ¶¶23-24.

¹¹ *CAF ROFR Order*, 29 FCC Rcd at 15649, ¶15.

¹² WTA Comments at 6-7.

contemplated new 25/3 Mbps or higher speed services and/or the new supported technology? Will they be willing to incur the time, effort, service disruptions, learning curve and cost to do so?¹³

Only a company that is used to relying on the government to fund its operations would think that it is the Commission's responsibility to answer these types of marketing and business development questions. If incumbent LECs do not know the answers to these questions for their own customers, or believe that they will be unable to provide and sell broadband services at the required 25/3 Mbps, then the answer is simple – they should not participate in the Rural Digital Opportunity Fund auction. As the Connect America Fund auction demonstrated, there are many other providers, including electric cooperatives, fixed wireless operators, satellite providers, and cable companies, that are willing and able to serve these areas. There is no need to continue to provide preferential treatment to incumbent LECs.

II. BEGIN OFFERING RURAL DIGITAL OPPORTUNITY FUND SUPPORT TO UNSERVED CENSUS BLOCKS AS SOON AS POSSIBLE

In its comments USTelecom asserts that the Rural Digital Opportunity Fund should rely on the data produced by the Commission's newly-adopted Digital Opportunity Data Collection, which was only adopted in August and which is the subject of an ongoing rulemaking proceeding.¹⁴ In particular, USTelecom would like the Commission to create a broadband serviceable location database, or "fabric," before distributing support to wholly unserved census blocks.¹⁵ The creation of this fabric is not necessary to move forward with the competitive

¹³ *Id.* at 3-4.

¹⁴ USTelecom Comments at 9; *Establishing the Digital Opportunity Data Collection*, WC Docket No. 19-195, Report and Order and Second Further Notice of Proposed Rulemaking, FCC 19-79 (rel. Aug. 6, 2019) (*Data Collection Order and FNPRM*).

¹⁵ USTelecom Comments at 11.

bidding process and will only serve to delay the distribution of Rural Digital Opportunity Fund support to areas where it is needed.

The Commission currently is seeking comment on creating such a broadband location fabric in the Digital Opportunity Data Collection rulemaking proceeding.¹⁶ As NCTA and others have commented, there are many unanswered questions about the cost and necessity of the Commission creating a database of every broadband-serviceable structure in America.¹⁷ Certainly it will take a significant amount of time to do so, even in the wholly unserved census blocks. USTelecom optimistically suggests that it could be done in 5-8 months,¹⁸ but this timeframe does not factor in the completion time of the ongoing rulemaking or the need for Office of Management and Budget review and approval, which will add exponential amounts of time to USTelecom's estimate. It is not feasible for a broadband fabric to be created by the Commission before the commencement of the competitive bidding process in 2020. The Commission should not make consumers in these unserved census blocks wait this additional amount of time before they can receive broadband supported by the Rural Digital Opportunity Fund.

USTelecom argues that creation of the fabric will provide more accurate location counts, which will help auction participants in the bidding process.¹⁹ While it may be true that more precise geolocation of broadband structures could be helpful to bidders, it is not necessary, nor is

¹⁶ *Data Collection Order and FNPRM*, FCC 19-79, ¶¶100-111.

¹⁷ NCTA Comments, WC Docket No. 19-195, at 20-22 (Sept. 23, 2019) (NCTA Digital Opportunity Data Collection Comments); *see also* ACA Comments, WC Docket No. 19-195, at 15-17 (Sept. 23, 2019); Alaska Communications Comments, WC Docket No. 19-195, at 16-18 (Sept. 23, 2019); State of Colorado Comments, WC Docket No. 19-195, at 9 (Sept. 23, 2019).

¹⁸ USTelecom Comments at 11.

¹⁹ *Id.*

it the Commission's obligation to provide this information. The Commission has conducted many successful auctions in the past without creating an extensive broadband location fabric. And the obligation has been on auction bidders to be familiar with the areas in which they plan to provide service, including identifying the number and locations of potentially serviceable structures. There is no need for the Rural Digital Opportunity Fund competitive bidding process to differ from this successful past practice, especially given the urgent need for broadband deployment in these wholly unserved areas.²⁰

III. ADOPT AN EFFICIENT AND WORKABLE AUCTION PROCESS

A. Do Not Provide Support for Locations That Are Not Served

The Commission must ensure that universal service fund dollars are used efficiently and effectively and that the Rural Digital Opportunity Fund supports the deployment of broadband to as many unserved locations as possible. There is no justification for providing support for locations to which the auction winner does not deploy broadband, as some commenters suggest.²¹ Specifically, these commenters argue that winning bidders should receive support for the number of locations for which they bid, even if there turn out to be fewer locations available to serve.²²

The Commission has determined that high-cost universal service support should be distributed in a straightforward manner in the majority of cases: broadband providers receive a

²⁰ The Commission also has afforded providers some flexibility in meeting their location count obligations, including alerting the Commission when location count estimates exceed the number of locations able to be served in an area and allowing providers to reduce their commitments and support amounts accordingly. The Commission proposes to adopt the same approach in the Rural Digital Opportunity Fund. *Rural Digital Opportunity Fund NPRM*, FCC 19-77, ¶30; NCTA Comments at 8.

²¹ CenturyLink Comments at 21-22; ITTA Comments at 5, 11; USTelecom Comments at 12-16; Windstream Comments at 21.

²² CenturyLink Comments at 21-22; ITTA Comments at 11; USTelecom Comments at 14-16; Windstream Comments at 21.

set amount of support for deploying broadband at a set speed to a location. If a provider does not deploy broadband to a location, it should not receive support for that location. The commenters advocating for this approach would place the burden of verifying the accuracy of location counts on the Commission rather than on the bidders themselves, where it belongs. These same commenters do not argue that bidders should have to build to more locations without receiving additional support if the location data undercounts the number of locations in a service area. There is no reason to provide free support to winning bidders for locations that they do not actually serve.

B. Prioritize Support to Areas that Need It Most

Although the Commission is proposing initially to target Rural Digital Opportunity Fund support to wholly unserved census blocks, these blocks are not similarly situated. Some blocks have had access to 10/1 Mbps broadband service through incumbent LECs' receipt of Connect America Fund support, while other blocks do not have even 10/1 Mbps service. The Commission should prioritize providing Rural Digital Opportunity Fund support to these completely unserved census blocks.²³

In contrast, Verizon asks the Commission to limit the amount of support that would be available to serve the most expensive-to-serve areas.²⁴ This approach is inconsistent with the Commission's goal of providing broadband to all high-cost areas and would ensure that the most costly areas will never receive broadband. Verizon's suggestion would redirect support from areas that would have been eligible for Remote Areas Fund support, if the Commission had ever enacted that program, to areas where incumbent LECs already are providing service with

²³ *Rural Digital Opportunity Fund NPRM*, FCC 19-77, ¶ 60.

²⁴ Verizon Comments at 9-10.

Connect America Fund support. Instead, the Commission should focus the Rural Digital Opportunity Fund on the areas most in need of broadband, i.e., areas with no service at 10/1 Mbps, even if it is more expensive to serve these places. Verizon would have the Commission focus on “bang for the buck” over broadband for those who most need it.²⁵

Verizon is correct, however, in stating that the Rural Digital Opportunity Fund should not award duplicative support.²⁶ This support should not be available for locations where a provider has been approved to receive federal or state support, including from the Connect America Fund auction, the New NY Broadband Program, or the Department of Agriculture’s ReConnect Program. Providers should also not be able to receive Rural Digital Opportunity Fund support for locations that are subject to broadband deployment merger commitments.²⁷

C. Speedtest Data Should Not Be Part of the Challenge Process

In its comments NRECA argues that the Commission should allow the submission of speedtest data in the challenge process to demonstrate that an area is unserved by 25/3 Mbps broadband.²⁸ However, as NCTA has commented in the Digital Opportunity Data Collection proceeding, speedtest data can only prove the availability of broadband at a certain speed in an area, but it cannot disprove its availability.²⁹ This is because the subscriber running the speedtest may subscribe to a slower broadband speed tier, have older equipment incapable of handling

²⁵ See Pennsylvania PUC *et al.* Comments at 4-5 (“[T]he Commission should prioritize communities that are unserved today (lacking at least 10/1 Mbps) over areas that already have 10/1 Mbps fixed broadband options but will be upgraded to 25/3 Mbps to meet the Commission’s current definition of broadband. . . . [T]he Joint Commenters believe this approach is warranted because it will target support to areas that lack 10/1 Mbps service where capital costs are likely to be greater than the incremental cost to upgrade 10/1 Mbps networks to 25/3 Mbps.”).

²⁶ Verizon Comments at 8-9.

²⁷ NCTA Comments at 4-5.

²⁸ NRECA Comments at 5.

²⁹ NCTA Digital Opportunity Data Collection Comments at 10.

higher speeds, run the test over a wireless connection, and/or have multiple users accessing the broadband connection at the time the test was run. Therefore, the Commission should not allow speedtest data to disprove the availability of 25/3 Mbps broadband service in the Rural Digital Opportunity Fund challenge process.

D. Decline to Adopt Overly Restrictive and Unnecessary Requirements

In our initial comments, NCTA asked the Commission to reconsider the requirement that Rural Digital Opportunity Fund applicants obtain a letter of credit, and to decline to require subscribership milestones for winning bidders.³⁰ There is overwhelming support in the record for both these proposals and the Commission should adopt them.

Many commenters discuss the significant burdens associated with obtaining the letters of credit previously required for receipt of Connect America Fund support.³¹ These burdens deter provider participation in the program and, in the case of well-established broadband providers, are not necessary to ensure that the providers remain solvent. The Commission should eliminate this requirement for well-established broadband providers that can demonstrate financial stability in less cumbersome ways, particularly if these providers have participated in other universal service programs without defaulting on any obligations.

Similarly, the initial comments display agreement that the Commission should not require providers to achieve certain subscribership levels as a condition of receiving Rural Digital Opportunity Fund support.³² Providers are able to control the broadband facilities that they

³⁰ NCTA Comments at 7-8, 9-10.

³¹ CenturyLink Comments at 10-16; INCOMPAS Comments at 13; ITTA Comments at 14-17; USTelecom Comments at 43-46; Windstream Comments at 17-18; WISPA Comments at 34-41.

³² CenturyLink Comments at 17-20; INCOMPAS Comments at 14; ITTA Comments at 23-26; U.S. Cellular Comments at 8-9; USTelecom Comments at 36-41; WISPA Comments at 21-26; WTA Comments at 21.

deploy, but they are not able to control consumers' purchases of those services. The Commission should not make it more difficult for providers to participate in the Rural Digital Opportunity Fund by holding them responsible for consumers' broadband purchasing decisions.

IV. REQUIRE FUNDING RECIPIENTS TO PROVIDE JUST, REASONABLE AND NONDISCRIMINATORY ACCESS TO POLES

In July, NCTA submitted an economic study demonstrating that pole attachment rates for poles owned by municipal and cooperative electric companies are more than double the rates charged by investor-owned utilities.³³ This is because pole attachment rates of investor-owned utilities are subject to regulation under section 224 of the Communications Act and pole attachment rates of municipal and cooperative electric companies are not.³⁴ We agree with CenturyLink that the Commission should require municipal or cooperative electric companies that participate in the Rural Digital Opportunity Fund to provide just, reasonable and nondiscriminatory access to and rates for pole attachments consistent with the Commission's rules.³⁵

Although it should be the case that no other broadband providers currently operate in the areas where a municipal entity or cooperative electric company would receive Rural Digital Opportunity Fund support, if other broadband providers are willing to enter the area to provide service they should be able to do so and should not be prevented by pole owners impeding access to or charging excessive monopoly attachment rates on their poles. Not only will this encourage

³³ Letter from Steve Morris, NCTA, to Marlene H. Dortch, Federal Communications Commission, GN Docket No. 17-83, WC Docket No. 17-84, WT Docket No. WT 17-79, Attachment (July 22, 2019).

³⁴ *Id.*; 47 U.S.C. §224.

³⁵ CenturyLink Comments at 22-28; 47 C.F.R. Subpart J.

the further deployment of broadband to the benefit of consumers, but it will obviate the need for future government support in these areas.

CONCLUSION

The Commission should ensure that broadband services are made available to the areas that need it most in the most efficient manner possible. To do so, it should decline to provide continuing advantages to incumbent LECs, either by providing them unwarranted continuing Connect America Fund support, or by providing them preferential treatment in the Rural Digital Opportunity Fund process. The Commission also should deploy funding to unserved areas as quickly as possible and should not wait for the development of a broadband serviceable location fabric.

Respectfully submitted,

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