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 CENTURYLINK

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I. INTRODUCTION AND SUMMARY

CenturyLink provides these reply comments in further response to the Commission's Notice of Proposed Rulemaking (NPRM) in the above-referenced matter.[2] In addition to the issues CenturyLink raised in its opening comments in this proceeding, the company recommends that the Commission revisit the proposed auction structure to optimize RDOF support for fiber deployments, use the full auction budget, and prohibit any bidder from bidding in excess of the total RDOF budget in any auction round. CenturyLink reiterates that RDOF support recipients should not be subject to loss of support if there are fewer locations available for deployment than were identified before the auction, that the Commission should amend its proposed letter of credit requirements, and that the Commission should not adopt a subscribership performance requirement. Finally, the Commission should use the most recent Form 477 data that was submitted prior to the circulation and adoption of the RDOF NPRM to preclude manipulation of that data to influence the RDOF auction.

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[1] This filing is made on behalf of CenturyLink, Inc's. subsidiary entities that are incumbent local exchange carriers, including its incumbent local exchange carrier Qwest Corporation d/b/a CenturyLink QC.

[2] *Rural Digital Opportunity Fund; Connect America Fund*, WC Docket Nos. 19-126, 10-90, Notice of Proposed Rulemaking, FCC 19-77 (rel. Aug. 2, 2019); 84 Fed. Reg. 43543 (Aug. 21, 2019) (RDOF NPRM or NPRM).

II. THE COMMISSION SHOULD REVISIT THE PROPOSED STRUCTURE OF THE AUCTION.

CenturyLink agrees with certain opening commenters that suggested that the Commission revisit its proposed auction structure to (1) ensure that the auction structure does not disfavor fiber deployment, (2) use the full auction budget, and (3) prohibit bidders from placing total bids in any auction round in excess of total RDOF support.

A. The Auction Structure Should Not Disfavor Fiber Deployment.

Many commenters have expressed concern that the proposed auction structure will favor lower-speed, high-latency satellite deployments over higher-speed, low-latency fiber deployments and that this will be to the detriment of consumers and businesses where a fiber gigabit deployment bid loses to a satellite bid.[3] Such an outcome would be inconsistent with and detrimental to the Commission's stated goals in this proceeding. Commenters have offered various proposals to address this concern. Some commenters have suggested that satellite simply be eliminated as a technology that can participate in the RDOF.[4] Other commenters have suggested reductions in the permissible high latency that can qualify for support.[5] Still other commenters have proposed changes to the tiers and the weighting of the tiers to establish a

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[3] *E.g.*, ACA Connects Comments at pp. 5-8; Buckeye Hills Regional Council Comments at p. 9; Incompas Comments at pp. 10-12.

[4] *See, e.g.*, Buckeye Hills Regional Council Comments at p. 9 (recommending elimination of the high-latency option for RDOF to "avoid investment in satellite-based options that do not offer a long-term solution for the needs of [Appalachian Ohio]"); Verizon Comments at pp. 4-5 (recommending that the Commission eliminate the high-latency tier for at least the Phase I RDOF auction).

[5] Mississippi PSC Comments at p. 2 (recommending that the high-latency requirement be changed to less-than-or-equal to 500 ms); NTCA Comments at pp. 10-12 (recommending maximum high-latency metric be changed to 550 ms).

preference for higher-speed, low-latency deployments.[6] Finally, commenters also have recommended changing the approach to the auction bidding rounds.[7]

CenturyLink agrees that the auction framework should be changed to support the Commission's goals for further higher-speed broadband deployment in price cap areas. The Commission should not focus exclusively on a policy for the next ten years that may maximize deployment to the next speed tier as quickly and as inexpensively as possible. That baseline speed tier that is already below what many urban customers demand, and many customers may have to ensure a latency that in their voice and high-speed internet communications that they would not choose if they had options. Instead, the Commission should establish a policy for the RDOF that will look to the future and encourage more robust broadband deployments in rural areas now and further establish network infrastructure capable of supporting 5G services.

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[6] *See, e.g.*, ACA Connects Comments at pp. 5-9 (recommending adjusting the performance tier weights in part to "advance the Commission's preference for rewarding high-speed, 'future-proof' broadband services at auction[]" (footnote omitted); Buckeye Hills Regional Council Comments at p. 9 (recommending maximizing point spread between gigabit tier and other speed tiers and eliminating high-latency option for RDOF); Fiber Broadband Association (FBA) Comments at pp. 6-12 & App. A; Comments of the North Dakota Joint Commenters at second to fourth pages (note: pages are unnumbered); NTCA Comments at pp. 13-16; Windstream Comments at pp. 11-17.

[7] *See, e.g.,* Conexon Comments at pp. 2-9 (recommending that once the total bidding meets the auction budget bidding between performance tiers should cease and in a geographic area support should be awarded to the highest performance tier and lowest weight bid with the auction only continuing in areas where there is more than one highest tier/lowest weight bid); Mississippi Comments at pp. 2-3 (same); NRECA Comments at pp. 9-10 (recommending that "[i]n the clearing round, the bidder with the lowest [tier and latency] combination below the clearing price point would be the winner, even if another bidder with a more heavily weighted T&L combination placed a lower percentage bid".)

CenturyLink views optimizing RDOF support for fiber deployments as a worthwhile policy goal.[8]

B. The Commission Should Redesign the Auction Structure to Use the Entire Auction Budget.

Some commenters noted that the manner in which the Commission designed the CAF II auction, ensured that it did not use the entire CAF II auction budget.[9] Leaving potential support amounts undistributed seems an inefficient use of the auction process and further disadvantages fiber-rich deployment. CenturyLink agrees with those who have suggested that the Commission revisit the proposed RDOF auction structure to enable full use of the auction budget.[10] Options include stopping the mandated clock reduction in uncontested areas, offering additional auctions that focus on areas not won during the first auction or a right of first refusal to the dominant provider of the area, and/or establishing reserve prices that better reflect the cost of construction and value of broadband services to the consumer. Stopping clock reductions in uncontested areas reflects the value those CBGs relative to others and better reflects the budget for those CBGs. Offering additional rounds of auctions of areas not won (aka not bid upon) during the

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[8] Even with the Commission's focus on extending higher-speed broadband to high-cost areas it should not be forgotten that voice service remains the linchpin of high-cost universal service support. Providers bidding in the RDOF auction should not lose sight of this critical obligation to offer qualifying "voice telephony" from the inception of their RDOF support period. The Commission should clarify under what circumstances voice service provided over satellite broadband qualifies as federal USF-supportable "voice telephony" service.

[9] *E.g.*, Fiber Broadband Association (FBA) Comments at pp. 3-6 & App. A; NRECA Comments at p. 10.

[10] For instance, Conexon has suggested that the Commission's auction objective should be to "determine which services should be subsidized *within the budget*, not at the least possible cost." Conexon Comments at p. 8 (emphasis in original).

first auction lets bidders focus on those additional areas and reduces the inter-CBG competition that may have caused those areas to be ignored in the first place.

C. The Commission Should Prohibit Bids That Exceed the Total RDOF Budget.

Also, bidders should be prohibited from placing bids for which the total amount bid exceeds the total RDOF budget, as this strategy appears likely to have negative consequences and little if any legitimate benefits. Even though each bid cannot exceed the clock percentage, i.e., the amount of funding available for a census block group, if a bidder bids the clock percentage for all census block groups, the bidder will exceed the total budget because there is not enough funding to support deployment to all eligible census block groups. The bidder knows that it cannot win all of the bids it has made, and thus is bidding on areas that it does not intend to win. But, by bidding in excess of the budget, the bidder forces additional clock rounds before reaching the clearing round and drives all bids further down. Providers legitimately interested in broadband deployment in certain census block groups may be forced to exit the bidding or risk winning less support as a result of winning sub-optimal bids. The Commission should prohibit this bidding tactic that undermines legitimate broadband deployment bids.

III. RDOF SUPPORT RECIPIENTS SHOULD NOT LOSE AUTHORIZED SUPPORT DUE TO INCORRECT INITIAL LOCATIONS COUNTS.

CenturyLink and others noted in their opening comments that the Commission should not penalize winning bidders by reducing support in the situation where the number of locations within a bid turn out to be higher than the number of available serviceable locations.[11] CenturyLink provides here additional explanation of that advocacy. The mechanics and

[11] CenturyLink Comments at pp. 21-22; NTCA Comments at pp. 18-23; Windstream Comments at p. 21.

complexity of the auction require bidders to rely upon the information within the bid. They will estimate their build cost and determine the financial hurdles they need to clear to remain in the auction (i.e. continue bidding) based on the location data provided prior to auction. If, post-auction, it is found that the locations within the bid-upon Census Block Group are higher than the number of actual locations physically available, it should not cause the winning bidder to return funding. It is important that bidders be able to rely on the information provided and, unlike with CAF II statewide offers of support, there are no meaningful cost savings from deploying to fewer locations when serving the entire census block.

The manner in which support will be awarded for RDOF demands different treatment than the manner in which support was awarded for CAF II model support. CAF II model support recipients could adjust their builds post award, as long as the aggregate totals within the state met the location target. In particular, the number of CAF II eligible locations in a state was substantially greater than the obligation. This flexibility provided carriers an option to adjust build plans as unforeseen issues arose. An alternate site would be selected within the program area to satisfy the statewide target. As a corollary, however, carriers also could realize substantial cost savings by not building to particular census blocks. The proposed approach for RDOF, however, targets specific census blocks and requires, in effect, that the carrier deploy network to serve the entirety of those census blocks regardless of the number of locations ultimately found there. Accordingly, a reduction in the number of locations will not produce cost savings and, as a result, carriers should not have to refund any support where it turns out that there are fewer locations than the Commission anticipated in the auction.

IV. THE COMMISSION SHOULD RECONSIDER THE LETTER OF CREDIT REQUIREMENTS FOR THE RDOF.

Along with CenturyLink, many commenters expressed concern with the Commission's proposed letter of credit requirements for RDOF. Some commenters suggested that the Commission permit performance bonds as an option for providing financial security to the Commission in the event of a performance default.[12] Others suggested revising the letter of credit obligations to be less onerous and provide financial protection better tailored to the risks of non-deployment as those risks change over the course of the program.[13] Still others recommended additional pre-bid requirements in lieu of letters of credit.[14]

CenturyLink remains concerned that the letter of credit requirements as proposed will divert far too much of the available funding to excessive security against possible default. In addition, CenturyLink agrees that the individual burden is likely to inhibit otherwise qualified providers from participating in the auction, and result in program defaults if winning bidders are unable to secure letters of credit in later years of the program when the funding levels are the most substantial. At least one winning bidder in the CAF II auction has defaulted because the

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[12] *E.g.*, Comments of California Internet, L.P. DBA Geolinks (Geolinks Comments) at pp. 12-13; Surety & Fidelity Association of America Comments; WISPA Comments at pp. 34-39.

[13] *E.g.*, CenturyLink Comments at pp. 10-16; Geolinks Comments at pp. 13-14 (expressing a strong preference for a performance bond option, but also offering a reduced letter of credit option); ITTA Comments at pp. 14-18 & Appendix; NCTA Comments at p. 9 (recommending that the Commission eliminate the letter of credit requirement for "well-established broadband providers that can demonstrate financial stability in less cumbersome ways[]"); USTelecom Comments at pp. 43-47; WISPA Comments at pp. 39-41.

[14] Windstream Comments at pp. 17-19 (recommending that in lieu of letters of credit the Commission (1) require pre-bid escrow amounts; (2) cap bids at company annual revenue amounts; and (3) require winning bidder to immediately offer voice service throughout winning bid area upon receipt of authorized support).

company was unable to secure the requisite letters of credit for its winning bids.[15] And, it remains to be seen whether CAF II auction support recipients will be able to obtain letters of credit for the increasing support amounts that must be secured in that program. The Commission cannot lean on the CAF II experience to date as support for implementing the same letter of credit requirement for RDOF. With the nearly twenty-fold increase in support available under RDOF, the letter of credit requirements both for the individual provider and across the industry will be unprecedented and the negative impacts magnified. The Commission must re-evaluate and revamp the letter of credit requirements for the RDOF program.

Additionally, as addressed in CenturyLink's opening comments, because the costs required to sustain letters of credit are amounts not able to be put toward broadband deployment, sustaining unnecessarily large letter of credit amounts is inefficient and undermines broadband deployment to high-cost areas.[16] Similarly, large letters of credit will also reduce a company's access to capital by negatively impacting its ability to obtain financing.[17] Because letters of credit are treated as debt, they reduce a company's ability to borrow money and in turn may subject the company to more onerous borrowing conditions. This adds to the negative financial impact of large letters of credit that may unnecessarily curtail participation in the RDOF program. To effectively balance encouraging participation in the RDOF auction while

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[15] *Workable Programs & Systems, Inc.*, File No. EB-IHD-19-00029984, Notice of Apparent Liability for Forfeiture, DA 19-957, at ¶ 7 & n.19 (rel. Oct. 11, 2019). Of course, an initial default resulting from a winning bidder being unable to obtain the requisite letters of credit may just reflect that the letter of credit requirement is functioning appropriately. Still, it would be preferable to avoid defaults that leave support unused and leave areas without anticipated broadband deployment, especially in later years of a support program when deployment is already underway.

[16] CenturyLink Comments at p. 14.

[17] CenturyLink Comments at pp. 14-15; WISPA Comments at p. 40.

adequately protecting the public investment in the program, the Commission should revise its letter of credit requirements so that they are well-tailored to the risks for which they provide protection.

V. THE COMMISSION SHOULD NOT ADOPT A SUBSCRIBERSHIP PERFORMANCE METRIC FOR THE RDOF.

The vast majority of commenters addressing the issue joined CenturyLink in opposing the Commission's proposal to adopt a subscribership performance metric for the RDOF.[18] Most providers will have every incentive to market their services as most of the cost of deployment and operation of their broadband networks is sunk and they do not face substantial costs in augmenting capacity.[19] Providers can market their services and offer incentives to consumers to purchase their services, but providers cannot force consumers to actually buy their services nor can providers force their services on consumers that simply do not want the services (aka slamming/sliding). A subscribership performance metric may unfairly penalize providers who have fully deployed the requisite broadband service, but have been unable, for any number of reasons beyond their control, to have enough consumers purchase their services.[20] A subscribership performance metric is the wrong approach for ensuring that providers market their

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[18] *E.g.*, CenturyLink Comments at pp. 17-20; CETF Comments at pp. 12-15; Geolinks Comments at pp. 5-8; Incompas Comments at p. 14; ITTA Comments at pp. 23-26; NRECA Comments at p. 15; NCTA Comments at pp. 7-8; Race Comments at p. 11; Sacred Wind Comments at p. 8; US Cellular Comments at pp. 8-9; USTelecom Comments at pp. 36-41; WISPA Comments at pp. 21-26; WTA Comments at pp. 20-21.

[19] Satellite-based providers appear to be the exception, at least in some cases, due to substantial capacity constraints and the substantial cost of adding capacity.

[20] Even the few commenters that did not outright oppose the subscribership performance metric proposal recognized that issues such as low-capacity competition and low household income could have an adverse effect on subscription rates and opposed a 70% requirement as overly aggressive. *See* Buckeye Hills Regional Council Comments at pp. 13-14; NTCA Comments at pp. 28-29.

services to consumers in RDOF areas. Concerns with low consumer adoption of high-speed internet service should be addressed through other mechanisms. The Commission should heed the ground swell of disapproval for a subscribership broadband performance requirement and decline to adopt such a metric.

VI. THE COMMISSION SHOULD USE FOURTH-QUARTER 2018 FORM 477 DATA AS THE BASELINE DATA FOR DETERMINING AREAS ELIGIBLE FOR THE RDOF.

To determine the areas eligible for the RDOF program the Commission should use Form 477 data submitted prior to the adoption of the RDOF Notice of Proposed Rulemaking. This would be data that was submitted in March 2019 which would reflect deployment data as of fourth quarter 2018. This would remove the potential for providers to manipulate their reported broadband coverage to influence the RDOF auction. But, the Commission can then use a challenge process as proposed to consider more recent changes that impact the reported data.

Respectfully submitted,

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