

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

In the Matter of

The Rural Digital Opportunity Fund Auction
(Auction 904)

Rural Digital Opportunity Fund

Connect America Fund

AU Docket No. 20-34

WC Docket No. 19-126

WC Docket No. 10-90

COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION

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TABLE OF CONTENTS

	<u>PAGE</u>
I. INTRODUCTION	1
II. DISCUSSION.....	2
A. In Light of the National Pandemic Emergency, the FCC Should Reschedule the Opening of the RDOF Phase I Reverse Auction (Auction 904) for a Minimum of 120 Days.	2
B. The FCC Should Include a Question to Providers on Tribal Engagement on the Short-Form Application.	4
C. The FCC Should Include a Question to Providers on Planned Participation in State Matching Fund Programs on the Short-Form Application.	8
III. CONCLUSION	8

I. INTRODUCTION

The California Public Utilities Commission (CPUC or California) respectfully submits these comments in response to the Federal Communications Commission's (FCC) *Public Notice* issued March 2, 2020, in the above-captioned dockets.¹ In the *Public Notice*, the FCC seeks comments on the competitive bidding procedures and certain program requirements for the Rural Digital Opportunity Fund (RDOF) Auction (Auction 904).

In these comments, the CPUC urges the FCC to recognize the debilitating impact on Auction 904 of the present national public health emergency caused by the COVID-19 pandemic. California strongly recommends that the FCC postpone the Auction and reschedule it to a new date at least 120 days beyond the current date.

These comments also focus on the issues of engaging Tribes or Tribal entities in the process the FCC has established and coordinating with state broadband infrastructure funding programs. The CPUC recommends that the FCC revise the Auction 904 short-form application itself to procedurally recognize the role both of the Tribes and of state broadband programs.

Specifically, the short-form application should include two questions. First, the form should include a question to determine whether a provider intending to seek RDOF funds to offer service on Tribal Land has entered into an agreement with a Tribe to offer service on that land. Adding this question would help compensate for the lack of Tribal

¹ *In the Matter of the Rural Digital Opportunity Fund Auction (Auction 904); Rural Digital Opportunity Fund; Connect America Fund, Public Notice*, AU Docket No. 20-34, WC Docket Nos. 10-90, 19-126 (rel. March 2, 2020) (*Public Notice*).

consultation that currently, and unfortunately, is evident in the RDOF auction process. Second, the form should include a question asking whether a provider will seek state matching funds, if available, in any given state where it intends to bid. Once the FCC has processed short-forms, it should give states expedited notice of proposed Auction 904 participation in their respective states.

These comments are limited in scope, and silence on any particular issue should not be construed as agreement or disagreement. The CPUC reserves the right to comment further in the reply round.

II. DISCUSSION

A. In Light of the National Pandemic Emergency, the FCC Should Reschedule the Opening of the RDOF Phase I Reverse Auction (Auction 904) for a Minimum of 120 Days.

As the CPUC files these comments, the American public and all levels of government are responding to the most aggressive global pandemic in a century. The impacts on the United States' economy are severe. The first responsibility of telecommunications carriers and providers in this crisis is to keep their networks fully in service, meeting the surging bandwidth demands of the healthcare sector, of research institutions, and of millions of Americans sheltering in their homes.

Telecommunications carriers and providers should not be expected to choose between allocating resources to maintaining their networks at the highest levels of service and preparing for the complex RDOF Phase 1 reverse auction.

The CPUC strongly recommends that the FCC postpone the Phase I reverse auction, now scheduled for October 22, 2020, for a minimum of 120 days, to a new date certain of no sooner than February 19, 2021. We also recommend the postponement and rescheduling, by the same time increments, of the pre-auction filing of the short-form, and the post-auction long-form filing.

The CPUC notes that on March 25, 2020, the FCC announced the postponement of two spectrum auction-related events.² According to the announcement, “Given the COVID-19 pandemic, these changes were deemed necessary in order to protect the health and safety of Commission staff and to allow parties additional time to prepare to participate in Auctions 105 and 106.”³ Auction 105⁴ and Auction 106,⁵ while important, are significantly less complex than the proposed RDOF Phase I Auction (Auction 904). The amount of work required by potential service provider bidders to prepare their bids for this auction might be better spent now in network operations, capacity upgrades, and engineering for the current global emergency.⁶

² *FCC Changes Upcoming Auction 105 Schedule, Postpones Auction 106, Adjustments Made in Light of COVID-19 Pandemic*, News Release (rel. March 25, 2020) (News Release).

³ News Release, para. 1.

⁴ Public Notice, *Auction of Priority Access Licenses for the 3550-3650 MHz Band, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and other Procedures for Auction 105*; FCC 20-18, AU Docket No. 19-24 (rel. March 2, 2020).

⁵ Public Notice, *Auction 106 Postponed, Delay of FM Broadcast Construction Permits Initially Scheduled to Begin on April 28, 2020*; FCC 20-237, AU Docket No. 19-290 (rel. March 25, 2020).

⁶ The CPUC notes that due to the COVID-19 public health emergency, the CPUC postponed its deadline for California Advanced Services Fund (CASF) Infrastructure Account applications from April 1, 2020 to May 4, 2020. See announcement at https://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/Communications_-_Telecommunications_and_Broadband/Postponement%20of%20CASF%20Deadline%202020.pdf.

CPUC notes Chairman Pai’s statement in the News Release that accompanied the Public Notice, which said, “Many Americans have had to make tough decisions on how they do business in this rapidly changing environment, and the FCC is no different. After consulting agency staff within the relevant Bureaus and Offices, we determined that it was in everyone’s best interest to make these changes.”⁷ Auction 904 is an event that will take significant resources of the U.S. communications sector, FCC staff, and the state and local agencies currently involved in a national emergency, where we are all focused on supporting our fellow Americans. It is in this context that CPUC recommends postponement of the RDOF Phase I Auction by at least 120 days. This period is 90 days longer than that ordered by the FCC for Auction 105, yet it is a recommendation that still sets a date certain, unlike the indefinite postponement of Auction 106.⁸

B. The FCC Should Include a Question to Providers on Tribal Engagement on the Short-Form Application.

The *Public Notice* seeks comments on improvements to the short-form application (FCC Form 175).⁹ The CPUC considers the proposed short-form application to be incomplete because it does not ask bidders, who may offer or plan to offer, communication services on Tribal Lands, if they have had meaningful engagement with Tribes or Tribal entities. This fundamental principle of Tribal engagement was glossed

⁷ News Release, para. 2.

⁸ News Release, para. 2.

⁹ *Public Notice*, at para. 31.

over in the RDOF Report and Order¹⁰ and is currently missing altogether from the proposed short-form. To remedy this oversight, we recommend a second question be added to the “Operational History” section of the short-form requesting the following information: “If the applicant’s proposed service areas include Tribal Lands, does the applicant have appropriate Tribal agreement(s) to provide service?”

Including this question would help remedy a problem that exists in many Tribal Lands in California: a historical lack of reliable broadband service on Tribal Lands by both wireline and wireless service providers. Some Tribes may question the actions and intentions of a service provider planning to come on their land.¹¹ Further, responses to this question would inform the FCC on whether the service provider has discussed with the Tribe its plans to provide broadband service on the Tribe’s land.

Including this question is not only helpful from a Tribe’s perspective, but is also necessary to preserve the federal policy of trust responsibility, which requires the promotion of Tribal self-governance and the fostering of the federal government’s trust obligation toward Tribes.¹² According to the FCC’s Tribal Government Policy Statement, the FCC is to consult with Tribal governments prior to making decisions that

¹⁰ See FCC RDOF Report and Order, released February 7, 2020, para. 28. The FCC states, “While we remain committed to promoting deployment on Tribal Lands, we decline to extend a Tribal-specific preference to Tribal entities or to require a nontribal entity to ‘prove an established partnership prior to the auction.’”

¹¹ A Tribe may consider some of the following as negative impacts of a service provider: past history of telecommunications infrastructure failures on Tribal Lands, bad behavior by employees, lack of understanding of Tribal sovereignty, engaging in harmful behavior for cultural artifacts or sacred spaces, etc.

¹² See, e.g., *Morton v. Mancari* (1974) 417 U.S. 535, 541-42.

significantly or directly impact Tribal interests, their land, and resources.¹³ Merely allocating funds for service providers to build broadband infrastructure without Tribal input does not discharge the federal government's trust responsibility, nor is it consistent with the FCC's Tribal Government Policy Statement.

Upon the release of the Auction 904 proposed bidding procedures and program requirements, the FCC Chairman, in his statement released with the proposed bidding procedures, acknowledged the work on the Wind River Reservation in Wyoming.¹⁴ However, the CPUC cautions the FCC that by highlighting the great work of one Tribe, it not assume that all Tribes are similarly situated. Each of the 110 federally-recognized Tribes in California is situated differently with respect to communication services. Proceeding on the premise that one Tribe fully represents the many is a fundamental flaw that risks skewing this federal program based on limited information derived from experience with a small number of Tribes.

¹³ In the Matter of Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes, FCC 00-207 (rel. June 23, 2000). The policy further affirms the FCC's commitment to: (1) work with Indian Tribes on a government-to-government basis consistent with the principles of Tribal self-governance to ensure Tribes have adequate access to communications services; (2) develop working relationships with Tribal governments, and identify innovative mechanisms to facilitate Tribal consultation in agency regulatory processes; (3) streamline administrative processes and procedures to remove undue burdens that its decisions and actions place on Indian Tribes; (4) assist Tribes in complying with FCC statutes and regulations; (5) educate FCC staff about Tribal governments and Tribal cultures, sovereignty rights, Indian law, and Tribal communications needs; (6) work cooperatively with other Federal departments and agencies, Tribal, state and local governments to further the goals of this policy; (7) welcome submissions from Tribal governments to further these goals and principles; and (8) incorporate these Indian policy goals into its ongoing and long-term planning and management activities.

¹⁴ See Statement of Chairman Ajit Pai, Re: *Competitive Bidding Procedures and Certain Program Requirements for the Rural Digital Opportunity Fund Auction (Auction 904)*, AU Docket No. 20-24; WC Docket No. 19-126; WC Docket No. 10-90.

Echoing the Chairman's comments, we share the hope and vision that every native home would have robust and reliable communications service, whether rural or otherwise. The RDOF rules should address Tribal broadband in a separate category from rural broadband because many Tribes suffer from a lack of affordable and reliable communication services regardless of whether or not they are rural. Indeed, some Tribes are located in urban/suburban designated areas.

The Wind River Reservation has the benefit of a Tribally-owned communications provider that is also already an eligible telecommunications carrier (ETC). Out of the 110 federally recognized Tribes in California, none of the Tribes or Tribal entities are ETCs, only one has a license from the CPUC to offer service, and very few have Tribally-operated communications networks to the home.

The CPUC has commented extensively on issues in the RDOF docket, citing the need for state-federal collaboration, recommending the FCC wait for better broadband availability data and maps before holding the auction, and supporting Tribal bidding credit.¹⁵ RDOF proposes to award a tremendous amount of public money, which should be distributed fairly, inclusively, and prudently.

¹⁵ See CPUC Comments filed September 20, 2019, CPUC Reply Comments filed October 21, 2019, Ex Parte Notices filed December 5, 2019, January 13, 2020, January 22, 2020, January 24, 2020, February 26, 2020, and March 2, 2020.

C. The FCC Should Include a Question to Providers on Planned Participation in State Matching Fund Programs on the Short-Form Application.

To assist any of the 30 – 35 states¹⁶ across the nation that manage state broadband programs and plan to provide post-auction state matching fund programs, the FCC should include in the short-form two short questions which will facilitate federal – state cooperation in this regard. The CPUC suggests the short-form include these questions in the section the applicants identify the areas/states they intend to bid in.

- 1) Does the applicant intend to apply for any state-issued broadband infrastructure funding available as state matching funds for awards under Auction 904?
- 2) If the applicant does intend to apply for any state-issued broadband infrastructure funding, identify which state(s) and name(s) of the applicable funding programs.

In addition, the FCC should provide states with the names of providers that intend to seek state-issued matching funds following Auction 904. This type of information sharing will help state broadband programs across the nation seeking to leverage federal funds.

III. CONCLUSION

The CPUC appreciates this opportunity to comment on the proposed RDOF Auction 904 procedures and requirements. Given the ongoing COVID-19 pandemic, the FCC should delay Auction 904 by 120 days minimum. In its short form application, the FCC should include a question to applicants on agreements with Tribes to provide service on Tribal lands. This information will be helpful to both Tribes and state and federal

¹⁶ See, The Pew Charitable Trusts; *State Broadband Policy Explorer* (rel. July 31, 2019).

governments trying to tackle the problem of a lack of broadband service on Tribal Lands. The FCC should also include two questions asking if the applicants intend to pursue state-matching funds after the Auction, and if so, to identify the states and respective state broadband programs. This information will be helpful to states trying to leverage federal funding and provide matching funding.

Respectfully submitted,

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