

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

**Petition for Reconsideration of
Illinois Office of Broadband**

Pursuant to Section 1.429 of the Commission’s rules, 47 C.F.R. § 1.429,¹ the Illinois Office of Broadband hereby requests that the Commission reconsider its decision in the above-captioned proceedings to forego its historically cooperative approach to the state-federal universal service partnership in establishing the Rural Digital Opportunity Fund (“RDOF”).² The Illinois Office of Broadband, housed within the Illinois Department of Commerce and Economic Opportunity, is an interagency collaborative effort including the Illinois Department of Innovation and Technology (“Illinois DoIT”) and Illinois Department of Commerce and Economic Opportunity (“Illinois DCEO”),³ among others. State and federal broadband agencies share a broad set of goals to expand the availability, affordability, and utilization of broadband services

¹ 47 C.F.R. § 1.429(b) (“A petition for reconsideration which relies on facts or arguments which have not previously been presented to the Commission will be granted only under the following circumstances: (1) The facts or arguments relied on relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters to the Commission . . . or (3) The Commission determines that consideration of the facts or arguments relied on is required in the public interest.”).

² *Rural Digital Opportunity Fund*, WC Docket No. 19-126, Report and Order, FCC 20-5, 85 Fed. Reg. 13773 (Mar. 10, 2020) (the “RDOF Order”).

³ Illinois DoIT previously participated in this proceeding, filing comments in the initial comment round. *See* Comments of Illinois DoIT, WC Docket No. 19-126 (filed Sept. 20, 2019). Together with Illinois DoIT, Illinois DCEO is also an “interested person” under Section 1.429(a) of the Commission’s rules, 47 C.F.R. § 1.429(a) because Illinois DCEO (together with Illinois DoIT) administers the Connect Illinois initiative, which is making available \$400 million in broadband grant funding to support infrastructure investment by service providers in the state.

across the nation. Now, more than ever, it would serve the public interest for the Commission to coordinate with state-level officials in pursuit of those goals.

The current COVID-19 pandemic has brought into sharp relief the vital importance of broadband connectivity in our modern world. “Social distancing” strategies to slow the progress of the pandemic and “flatten the curve” of infections have been made possible by broadband communications services. Broadband allows many facets of human life to unfold remotely, reducing risk of infection while preserving critical human interaction and delivery of services. Doctors are diagnosing, monitoring, and treating patients remotely; students are continuing their education while physically separated from their teachers and classmates; businesses are launching and expanding their services online to meet customer needs and maintain commercial activity; coworkers are collaborating via videoconference instead of in person; families and friends are gathering for virtual social interaction and support.

At the same time, the pandemic has placed newly emergent strains on federal and state government resources, as well as the private sector. It has prompted massive new government spending on economic recovery and social services. It has stalled the engines of private sector commerce, foreshadowing lower tax revenues to offset that spending. And, these conditions are likely to persist. The eventual recovery is currently forecast to be gradual, as the pandemic threat recedes slowly and unevenly and people gradually resume lives transformed by their experience.⁴

The pressures that have emerged on governments to accelerate the deployment and availability of broadband, and to do so through impactful but economically efficient means, constitute grounds on which the Commission should reconsider and expand its approach to state-

⁴ See, e.g., Philipp Carlsson-Szlezak, Martin Reeves, and Paul Swartz, “Understanding the Economic Shock of Coronavirus,” *Harvard Business Review* (Mar. 27, 2020), available at: <https://hbr.org/2020/03/understanding-the-economic-shock-of-coronavirus>.

federal partnership under the RDOF. As the California Public Utilities Commission (“CPUC”) recently pointed out in its comments concerning RDOF auction procedures, some 30-35 states manage state broadband programs⁵ and may plan to provide post-auction state matching funds. By taking a more coordinated approach, the Commission and state authorities can leverage their shared expertise and joint resources, in order to maximize the benefits that can be derived from their efforts and broadband infrastructure investments.

Discussion

A. The Commission Should Reconsider Its Decision to Forego Federal-State Partnership on Broadband Deployment Issues

The Commission’s Notice of Proposed Rulemaking in these proceedings acknowledged that universal service is a “federal-state partnership,” and invited comment on ways in which the RDOF could facilitate that partnership.⁶ Indeed, over the past two decades since the enactment of Section 254 of the Communications Act of 1934, as amended,⁷ the Commission has repeatedly reaffirmed that partnership as a cornerstone of the nation’s universal service policy and mechanisms.⁸

⁵ *Rural Digital Opportunity Fund Auction (Auction 904)*, AU Docket No. 20-34, Comments of the California Public Utilities Commission (filed Mar. 27, 2020), at 8 (CPUC RDOF Auction Procedures Comments).

⁶ *Rural Digital Opportunity Fund*, WC Docket No. 19-126, Notice of Proposed Rulemaking, FCC 19-77 (rel. Aug. 2, 2019), at ¶ 13.

⁷ 47 U.S.C. § 254.

⁸ *See, e.g., Federal-State Joint Board on Universal Service*, Report and Order, FCC 97-157, 12 FCC Rcd 8776 (1997), at ¶ 3 (“[W]e commit ourselves to working in close partnership with the states to create complimentary federal and state universal service support mechanisms.”), *aff’d in part, rev’d in part, remanded in part sub nom. Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Seventh Report & Order and Thirteenth Order on Reconsideration in CC Docket No. 96-45, Fourth Report & Order in CC Docket No. 96-262, and Further Notice of Proposed Rulemaking, FCC 99-119, 14 FCC Rcd 8078 (1999) (“Congress envisioned that the Commission and the states would share responsibility for implementing universal service reform.”); *Connect America Fund*, WC Docket No 10-90, Report and Order, FCC 11-161, 26 FCC Rcd 17663, ¶ 15 (2011) (“We recognize that USF and ICC are both hybrid state-federal systems, and it is critical to our reforms’ success that states remain key partners

Indeed, state broadband deployment initiatives are becoming increasingly common around the nation, and the Commission should look for ways to harness the public interest benefits of these investments. Just days ago, the Congressional Research Service reported that, “[i]ncreasingly, state governments have taken action to ensure that all residents, regardless of where they live or socioeconomic factors that may inhibit adoption, have access to broadband” and that, most commonly, “state broadband initiatives focus on broadband infrastructure deployment.”⁹ As a result, the Report suggested that Congress “consider enabling a universal method for states and localities to share ideas with Congress or federal agencies.”¹⁰

Likewise, 24 U.S. Senators recently expressed their concern with the inefficiency and counterproductive incentives created by the Commission’s disappointing approach to the RDOF auction:

We are concerned that your agency is penalizing states that have taken the initiative to create broadband programs to address the unserved communities across their own states. Limiting access to these vital federal funds could cause unintended harm to the constituents of our states who were counting on this funding opportunity as a chance to improve service for residents and overall quality of life in their communities. Our communities should not be put in the position to have to choose between federal or state funding opportunities.

We are also troubled by the discouraging message your agency is sending to states that are either in the process of, or are considering creating their own broadband programs. Given the FCC's critical role in connecting rural communities to high-speed internet through broadband expansion and deployment, your agency should be incentivizing states to take action and create their own programs, not deterring

even as these programs evolve and traditional roles shift. Over the years, we have engaged in ongoing dialogue with state commissions on a host of issues, including universal service. We recognize the statutory role that Congress created for state commissions with respect to eligible telecommunications carrier designations, and we do not disturb that framework.”).

⁹ Congressional Research Service, “State Broadband Initiatives: Selected State and Local Approaches as Potential Models for Federal Initiatives to Address the Digital Divide” (Apr. 6, 2020), at 6, *available at*: <https://crsreports.congress.gov/product/pdf/IF/IF10441> (“CRS State Broadband Initiatives”).

¹⁰ *Id.* at 13.

them by restricting the eligibility of their communities for federal programs such as the RDOF.¹¹

The RDOF Order nevertheless dismissed commenters encouraging a collaborative approach that would have coordinated and maximized the combined impact of state and federal resources.¹² Instead, over the dissent of two Commissioners, the Order declined to pursue such a coordinated approach, explaining narrowly in a footnote that, “creating separate mechanisms for particular states would cause significant delay in getting support to needy rural areas lacking broadband because we would need to establish new and state specific rules for each state and also ensure that each state’s mechanism for awarding support operated consistently with our decision to allocate support using market-based forces.”¹³

The Illinois Office of Broadband asks the Commission to reconsider this issue more creatively.¹⁴ The Commission unquestionably has the talent and resources, in consultation with the states, to overcome issues of complexity and delay. Even putting aside the 2017 framework the Commission devised for Connect America Fund (“CAF”) funding in New York,¹⁵ various alternative approaches could create a more coordinated result. As explained by the Vermont Department of Public Service, “[p]artnering with states in this manner will utilize the detailed

¹¹ Letter to Chairman Pai from Senator Schumer and Gillibrand, *et. al.* (Mar. 9, 2020), available at: https://www.gillibrand.senate.gov/imo/media/doc/3.9.2020_Gillibrand_Schumer_Letter_FCC_final.pdf.

¹² RDOF Order at ¶ 18 and n.45.

¹³ *Id.* at n.45.

¹⁴ See, e.g., *Ex Parte* Letter from Genevieve Shiroma, Commissioner, California Public Utilities Commission, WC Docket No. 19-126 (filed Mar. 2, 2020), at 2 (explaining that “deploying broadband infrastructure in remote and rural areas is very costly and [that] leveraging and combining both state and federal funding will be critical to the effort”) (“Commissioner Shiroma Letter”).

¹⁵ *Connect America Fund*, WC Docket Nos. 10-90, Order, FCC 17-2, 32 FCC Rcd 968 (2017).

understanding states have of their broadband needs and further congressional intent and the express terms of Section 254 of the Communications Act.”¹⁶

The Commission should, for example, implement the CPUC’s suggestion to gather information in the Auction 904 short-form applications concerning opportunities the applicants may have to leverage state broadband funding mechanisms, including (1) whether the applicant intends to apply for any state-issued broadband infrastructure funding available as state matching funds for awards under Auction 904; and (2) whether the applicant intends to apply for any state-issued broadband infrastructure funding.¹⁷ The Illinois Office of Broadband agrees with these suggestions, at a minimum, as well as the CPUC’s recommendation that the Commission then provide states with the names of providers that intend to seek state-issued matching funds or other broadband support following Auction 904.¹⁸ Doing so would help state broadband programs across the nation leverage federal RDOF funds as they manage their own programs.

In this case, stronger federal-state partnership would help coordinate state and federal broadband investment in order to maximize efficiency and minimize duplication. Otherwise, a provider serving an area receiving RDOF funds for infrastructure may later, after Auction 904, seek state funds so as to improve further the area’s broadband capability pursuant to bandwidth needs or state broadband goals. To the extent that such improvements would supplant or replace infrastructure deployed with RDOF funding, it would be more efficient for state and federal authorities instead to coordinate their initial investments and fund a single joint project. Another likely case would involve two separate broadband providers: one seeking federal RDOF funding

¹⁶ Petition for Reconsideration of Vermont Department of Public Service, WC Docket No. 19-126 (filed. Apr. 3, 2020), at 12.

¹⁷ CPUC RDOF Auction Procedures Comments at 8.

¹⁸ *Id.*

for minimal broadband tier service; the other seeking state funds for improved, fully scalable service in the same area.¹⁹ While competition among broadband providers and real choice for broadband consumers are laudable aims, the Illinois Office of Broadband is focused, first and foremost, on an efficient and effective approach to broadband ubiquity – at basic service levels in the near term and scalable to higher performance in the longer-term.

The Illinois Office of Broadband asks the Commission to pursue an innovative design for Auction 904 that incorporates the availability of state broadband funding within the context of a nationwide auction. The Commission should, for example, develop creative auction approaches that would incorporate the availability of state broadband funding resources as a positive (*i.e.*, favorable) weighting factor during the auction itself, or otherwise recognizing the potential availability of state funding to supplement the RDOF results within individual states.²⁰ Likewise, the Commission might consider providing a federal match in support of state funding, similar to the E-rate special construction match.

In addition, the Commission could further explore opportunities to make “block grants” of RDOF funding to states that, when combined with state-level funding, could overcome persistent broadband access issues in areas that are particularly difficult or costly to serve.²¹ State broadband offices and matching grant programs have expanded across the country over the past decade –

¹⁹ See CRS State Broadband Initiatives at 14.

²⁰ See Commissioner Shiroma Letter at 2 (suggested that the Commission pursue “joint notices to prepare bidders for this opportunity to leverage both state and federal funding opportunities); *Ex Parte* Letter from Helen M. Mickiewicz, Assistant General Counsel, California Public Utilities Commission, WC Docket No. 19-126 (filed Feb. 25, 2020), at 2 (asking that “state-funded broadband investments made within the context of the RDOF Auction Procedures should receive credit and recognition as positive weighting factors within the reverse auction framework” or, as an alternative, that the Commission design Auction 904 to permit “allowed and recognized state funding ‘stacking’” of funding to achieve higher speed deployments).

²¹ *Ex Parte* Letter from Vermont Department of Public Service, WC Docket No. 19-126 (filed Feb. 12, 2020), at 1.

both in terms of offered services, innovative mapping, and state funding.²² These state offices and matching grant programs have, by and large, performed well and are best positioned to drive significant and lasting change in terms of broadband access. However, no state has demonstrated an ability to forego federal funding in pursuit of broadband ubiquity; rather, the urgent challenge of extending scalable, high-speed internet access to all homes, businesses, and community anchor institutions will require strong federal-state partnership.

As a gesture to its interest in closer state-federal partnership, the Illinois Office of Broadband indexed its broadband definition to track that of the Commission. It applied this standard as its goal for near-term broadband ubiquity, and set another Commission broadband benchmark – namely, the 100/20 Mbps Above-Baseline performance tier – as its longer-term ubiquitous access goal. Like many of its peers in states around the country, the Illinois Office of Broadband is eager to partner with the Commission. Unfortunately, though, this interest has been rebuffed in deference to a one-size-fits-all federal approach that, frankly, does not ensure that all public investment in broadband will stand the test of time.

The Illinois Office of Broadband recognizes the dramatic need both for basic broadband access now and for access to even greater bandwidth in the years ahead. The idea of scalability has informed state broadband grant programs for years, and it will ensure that the investments our states make today will continue to provide critical broadband access well into the future. Unfortunately, though, the Commission’s current approach to federal-state partnership ignores state goals and renders certain RDOF projects eligible for state funding immediately upon deployment. More than a missed opportunity for meaningful federal-state partnership, this reality

²² See CRS State Broadband Initiatives at 1.

speaks to unacceptable inefficiency and ineffectiveness at a time when both efficiency *and* effectiveness are needed – especially when it comes to *how, where, and to what ends* our public agencies direct public funding toward lasting broadband ubiquity.

B. The Commission Should Reconsider Its Approach to the Minimum Performance Tier and the Eligibility of Census Blocks Served with 25/3 Mbps Broadband

For the same reason, and in light of the critical need for higher-performing ubiquitous broadband during the COVID-19 pandemic, the Commission should reconsider its decision to continue to treat broadband offering 25/3 Mbps service as a viable minimum in today’s connected world. The Commission initially rejected calls from Illinois DoIT and other parties to eliminate this tier, instead finding that “some sparsely populated areas of the country are extremely costly to serve and providers offering only 25/3 Mbps may be the only viable alternative in the near term.”²³ The world has changed, however, in the weeks since the Commission issued the RDOF Order. The Illinois Office of Broadband submits that the COVID-19 pandemic has demonstrated urgent demand for more robust and scalable broadband service at greater speeds than the Commission’s Minimum performance tier and shifted the public interest calculus on this score. Having created the Baseline performance tier requiring 50/5 Mbps,²⁴ the Commission should now make that tier the threshold for support in the RDOF auction. Likewise, the Commission should reconsider its definition of what constitutes acceptable basic broadband in today’s world.²⁵

²³ RDOF Order at ¶ 34.

²⁴ *Id.* at ¶ 31.

²⁵ *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket No. 18-238, 2019 Broadband Deployment Report, FCC 19-44, 34 FCC Rcd 3857 (2019), at ¶ 12.

Thus, the Illinois Office of Broadband requests that the Commission (1) eliminate the Minimum performance tier from the RDOF auction; (2) make census blocks that lack access to both fixed voice and 50/5 Mbps broadband services eligible for support in the RDOF auction at the Baseline performance tier or above; and (3) introduce a scalability requirement such that all RDOF projects provide ubiquitous access that will stand the test of time. Doing so will ensure that the auction fosters deployment and availability of more “future proof” broadband services that can scale over the next decade (and beyond) to meet the needs of the consumers who use them,²⁶ thus reassuring states that additional state resources will not be needed to provide RDOF-funded areas with scalable broadband in the years ahead.

In addition, presuming increased federal funding toward broadband ubiquity in light of the COVID-19 pandemic, the Commission should make census blocks that lack access to both fixed voice and 50/5 Mbps broadband services eligible for the RDOF auction’s higher speed tiers, *e.g.*, at the 50/5 Mbps Baseline performance tier and above.²⁷ Such an approach would preserve the Commission’s policy goal to create a viable deployment tier for extremely rural and high cost areas where 25/3 Mbps Minimum performance tier is the only economically viable option, even

²⁶ See, *e.g.*, *Rural Digital Opportunity Fund Auction (Auction 904)*, AU Docket No. 20-34, Comments of National Rural Electric Cooperative Association/Utilities Technology Council (“NRECA/UTC”), at 8-9 (“[M]any areas will inappropriately be rendered ineligible for Auction 904 because the areas have been awarded funding through a state or other federal grant program to provide 25/3 Mbps speed This may have the practical effect of delaying or denying areas access to robust broadband for telehealth, telework and online education services – which are best supported by the deployment of future-proof technologies that are capable of meeting increased consumer demands and effectively insulated from technology obsolescence for the life of the infrastructure.”).

²⁷ See *id.* at 9 (“While it arguably would be an inefficient use of available funds to award RDOF Phase I funding to projects that would only provide 25/3 Mbps services in areas that have already been awarded state or other federal funding for 25/3 Mbps projects, the reasoning should not operate to exclude RDOF Phase I funding for projects that would provide faster speeds than the 25/3 Mbps services that are being funded under state or other federal programs.”).

with support, while *also* creating an opportunity for areas currently served only at the Minimum performance level to gain access to the higher speed, more scalable services they need.

Conclusion

For the foregoing reasons, the Illinois Office of Broadband urges the Commission to reconsider its decisions in the RDOF Order, as described herein.

Respectfully submitted,



Matt Schmit
Director
Illinois Office of Broadband
100 W. Randolph Street, Suite 3-400
Chicago, Illinois 60601

Cynthia B. Schultz
Broadband Law Group PLLC
1050 Connecticut Avenue, NW, Suite 500
Washington, DC 20036
(202) 361-6550
cschultz@broadbandlawgroup.com

Counsel to Illinois Office of Broadband