USTELECOM | THE BROADBAND ASSOCIATION

July 23, 2019

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th St. SW
Washington, D.C. 20554

Re: USTelecom Ex Parte Notice, WC Docket No. 19-126, *Rural Digital Opportunity Fund*; WC Docket No. 10-90, *Connect America Fund*; WC Docket No. 19-195, *Establishing the Digital Opportunity Data Collection*; WC Docket No. 11-10, *Modernizing the FCC Form 477 Data Program*; *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. §160(c) to Accelerate Investment in Broadband and Next-Generation Networks*; WC Docket No. 18-141

Dear Ms. Dortch:

On July 18, 2019, representatives of USTelecom, AT&T, CenturyLink, Consolidated, Frontier, Verizon and Windstream (USTelecom Members) met with Randy Clarke, Legal Advisor for Wireline and Public Safety for Commissioner Geoffrey Starks; the full list of industry participants is below. The purpose of the meeting was for USTelecom to discuss the Draft Notice of Proposed Rulemaking (Draft NPRM) for the Rural Digital Opportunities Fund (RDOF)[1] and also USTelecom's Petition for Forbearance in the docket listed above.

The Draft NPRM Should Seek Comment on Alternative RDOF Designs

USTelecom noted that the Draft NPRM currently does not address other existing proposals in the record for the Rural Digital Opportunity Fund.[2] USTelecom has previously proposed a two-phase proposal for the RDOF that is similar in concept to the Draft NPRM's proposal but differs in some key ways. In particular, USTelecom's proposal would have the Commission's Phase I auction focus on completely unserved (lacking 25/3 Mbps speed) census block ***groups*** (i.e., the entire census block group would be lacking service, as opposed to a mix of served and unserved census blocks within the group). Our analysis revealed that there are 2,683 census block groups (CBGs) nationwide that are reported as entirely unserved at 25/3 Mbps. All of these CBGs are in rural areas and they contain approximately 724,000 unserved

[1] *Rural Digital Opportunity Fund*, WC Docket Nos. 19-126, 10-90, Notice of Proposed Rulemaking, FCC-CIR1908-01 (Draft NPRM).

[2] *See* Letter from Mike Saperstein, Vice President Policy & Advocacy, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 19-126 (filed June 24, 2019) (June 24 Ex Parte); *See* Letter from Mike Saperstein, Vice President Policy & Advocacy, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 19-126 (filed May 31, 2019) (May 31 Ex Parte).

housing units, slightly more than the number won in last year's CAF II auction.[3] The fact that the entire CBG (roughly 39 contiguous census blocks)[4] remains unserved suggests these CBGs may be particularly problematic to serve without USF support and unlikely to be bid upon in a larger auction as they were not awarded funding in the CAF II auction. Additionally, these totally unserved rural CBGs are geographically situated to better maximize network buildout efficiencies and thus could be attractive to bidders. Importantly, an auction based on totally unserved rural CBGs could be implemented using largely the same auction procedures as the CAF II Auction and, therefore, be designed and completed in a quick timeframe.

USTelecom estimates that approximately 5 million locations exist in census blocks currently marked as "served" actually lack 25/3 broadband.[5] Because of the potential size of this group of unserved rural locations, it is important to effectively identify these locations and make them eligible for auction. USTelecom proposed that following the initial auction, and after completing a location-based broadband reporting program consistent with the Broadband Mapping Initiative proposed by USTelecom, ITTA and WISPA,[6] the Commission could then move forward with an auction targeting *all* remaining unserved locations. The experience of USTelecom's members suggest that auctioning all unserved locations together allows for substantially more efficient bidding through a potentially larger-scale network design, which in turn would drive down the price to serve these areas and maximize the budget available. Such a two-stage approach would target those who are most in need of support quickly while providing an efficient and effective RDOF auction that ensures no unserved Americans are left behind.

USTelecom requests for the Commission to include in its Draft NPRM a question specifically seeking comment on whether an alternative approach to the two-phase RDOF could create a more efficient auction and serve more unserved Americans.

The Draft NPRM Should Better Acknowledge How More Granular Mapping Can Lead to a More Targeted Auction

The Commission released a draft item simultaneous with the Draft NPRM that would establish the Digital Opportunity Data Collection, acknowledging that "[e]ffectively targeting federal and state spending efforts to bring broadband to those areas most in need of it means

[3] *See* FCC, Connect America Fund Auction to Expand Broadband to Over 700,000 Rural Homes and Businesses, Press Release, https://docs.fcc.gov/public/attachments/DOC-353840A1.pdf (Aug. 28, 2018) (announcing that 713,176 locations will be served as part of the CAF 2 Auction).

[4] *See* Current 360, Research 101: Census Tracts vs. Census Block Groups, https://current360.com/research-101-census-tracts-vs-census-block-groups/ (last visited June 24, 2019) ("Block groups generally contain between 600 and 3,000 people, with an optimum size of 1,500 people. There are about 39 blocks per census group.").

[5] *See* USTelecom June 24 Ex Parte at 1. In the June 24 Ex Parte, USTelecom estimated there were approximately 6 million locations in census blocks currently categorized as "served" but that actually lacked 25/3 service. Further analysis since then suggests the number is likely closer to the 5 million figure used here.

[6] *See, e.g.*, Letter of B. Lynn Follansbee, VP Law & Policy, USTelecom to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 11-10 (Mar. 21, 2019).

understanding where broadband is available and where it is not."[7] USTelecom agrees, and in fact its entire RDOF proposal is premised upon developing a map that shows on a granular basis where the gaps in broadband service exist.[8] The Draft NPRM, however, does not acknowledge the existence of the proposed Digital Opportunity Data Collection beyond a footnote[9] and instead relies on flawed Form 477 data and the Connect America Model, which itself is based on data from 2011.[10] The Draft NPRM's lack of acknowledgement of the Collection is striking given that Collection item would "conclude that in order to continue to advance our statutory universal service obligations, it is necessary to create a new data collection, calculated to produce broadband deployment maps that will allow the Commission to precisely target scarce universal service dollars to where broadband service is lacking."[11] The RDOF is one of the largest single universal service funding exercises that the Commission has ever proposed so it would be logical to use the Collection to effectively target funding.

USTelecom also discussed the need for more accurate location counts in order to participate in the RDOF auction; the RDOF proposes to be a location-based auction so correctly identifying the number of locations in each census block is essential. An important element of the Collection (specifically the Broadband Serviceable Location Fabric that USTelecom has proposed and the Commission seeks comment on in its Collection item[12]) is its ability to better identify the number of locations in each census block. The Draft NPRM proposes to rely on the Connect America Model to establish the census block counts[13] but preliminary results from USTelecom's Broadband Serviceable Location Fabric pilot project show that that 2011 census counts, upon which the Connect America Model relies, are inaccurate 64% of the time.[14] If the census block turns out to contain fewer locations than expected then the provider would be penalized funding as a result much later after it has committed resources to deployment. If the census block turns out to undercount the number of locations in a census block then it is possible some locations would inadvertently remain unserved. Neither result is desirable.

USTelecom requests that the Commission amend the Draft NPRM to better acknowledge and integrate the proposed Digital Opportunity Data Collection into its plans for the RDOF. USTelecom also requests the Commission seek comment on any unintended consequences from relying on the Connect America Model that is based on 2011 data and how the Digital

[7] *Establishing the Digital Opportunity Data Collection*, WC Docket Nos. 19-195, 11-10, Report and Order and Second Further Notice of Proposed Rulemaking, FCCCIRC 1908-02, at para 1. (DODC)

[8] *See* May 31 Ex Parte at Appendix A.

[9] Draft NPRM at para.43, n. 76.

[10] *Connect America Fund*; *High Cost Universal Service Support*, WC Docket Nos. 10-90, 05-337, 29 FCC Rcd 3964 at para. 47, n. 146 (WCB 2014).

[11] DODC at para. 10.

[12] *Id.* at para. 97.

[13] Draft NPRM at para. 52.

[14] *See* Letter from B. Lynn Follansbee, Vice President, Policy & Advocacy, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 11-10, 10-90, 19-126 at 2 (filed July 1, 2019) (July 1 Ex Parte).

Opportunity Data Collection could be used to accurately identify the number of locations in each census block before an auction begins.

The Draft NPRM Should Seek Comment on How It Can Better Clarify Obligations During the Transition from CAF Phase II to the RDOF

While the Draft NPRM contains a section seeking comment on transitions between the Connect America Fund (CAF) Phase II model-based support program and the RDOF, it does not pose enough questions to address the issue sufficiently. There are two primary concerns. First, the item should take a more holistic view of Commission precedent surrounding the price cap transition period. The current draft quotes only portions of the USF/ICC Transformation Order and December 2014 Connect America Order to make the point that the model-based support is of "limited scope and duration"[15] without also addressing parts of both of those Orders that add proper context and the statutory commitment to "specific, predictable and sufficient . . . mechanisms to preserve and advance universal service."[16] For instance, the Order explicitly states that if a universal service auction "is not implemented by the end of . . . CAF Phase II, the incumbent ETCs will be required to continue providing broadband with performance characteristics that remain reasonably comparable to the performance characteristics of terrestrial fixed broadband service in urban America, in exchange for ongoing CAF Phase II support."[17] Additionally, the draft omits the original rationale for the seventh year of support, as a tradeoff for increasing the CAF 2 speeds to 10/1 Mbps,[18] and ignores the Commission's steadfast commitment to "no flash cuts."[19] Given that the Draft NPRM acknowledges "the potential time period between the end of the CAF Phase II model-based support term and the authorization of the [RDOF] support recipients," it should add language that provides necessary context to make informed comments on the transition.

Second, the Commission should seek comment regarding how the actual service period will be transitioned where a new winner supplants a CAF II model-based support recipient. In particular, if the auction winner is not (nor could reasonably be) expected to have plant in place to serve those areas immediately, what happens to service in the interim? The 100% milestone is not until the end of year six – how will the Commission ensure rural consumers continue to have

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[15] Draft NPRM at para. 100.

[16] 47 U.S.C. 254(b)(5).

[17] *Connect America Fund et al., WC Docket No. 10-90 et al.,* Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, para. 163 (2011) (USF/ICC Transformation Order), aff'd sub nom. In re FCC 11-161, 753 F.3d 1015 (10th Cir. 2014).

[18] *Connect America Fund et al*., WC Docket No. 10-90 et al., Report and Order, 29 FCC Rcd 15644, para. 148 (2014) ("If the Commission adopts the proposal to extend broadband downstream speeds to 10 Mbps, . . . should carriers accepting a state-level commitment for five years have the ability to extend that term for additional two years."); *Id.* at para. 32 ("This is consistent with the principle established in the USF/ICC Transformation Order of "no flash cuts," while also recognizing that additional funding may be appropriate in particular circumstances in those states where six years of support is insufficient to cover the capital investment necessary to meet the revised 10 Mbps downstream standard.").

[19] *See, e.g., USF/ICC Transformation Order* at para. 870.

access to telecom services? If a price cap carrier no longer receives support, how will the Commission streamline the process for ending ETC obligations, preempt state carrier-of-last-resort obligations, and ensure providers have a streamlined process for exiting the market? Also, what happens if a CAF II recipient is serving a high-cost area that is excluded from the RDOF or not won in the auction and what are the expectations of the price cap carrier currently serving that area if it will no longer receive funding to do so? There are many locations where broadband deployment was supported by CAF Phase II where the ongoing operating and maintenance expenses of the service cannot be met without continuing operational support after the end of CAF Phase II. This is particularly true where a LEC must purchase middle mile services from a third party in order to deliver internet service. The Commission should inquire here about the level of support necessary to ensure ongoing operation and maintenance of broadband deployed under CAF Phase II in such census blocks. These are crucial questions that demand clarity and adding these questions will help to do so.

The charts and attachments that USTelecom had previously distributed during its ex parte meetings with the Bureau were also used as topics of discussion.[20]

The Commission Should Grant USTelecom's Request for Forbearance

During the meeting, the USTelecom representatives reiterated their request for nationwide forbearance from analog voice-grade cooper loops under Section 251(c)(3) of the Act and the Commission's rules and avoided cost resale obligations under Section 251(c)(4) of the Act and the Commission's rules.

Consistent with previous advocacy, the USTelecom representatives explained that the record demonstrates that forbearance from these monopoly-era mandates is consistent with the public interest and that maintaining the requirements, relevant only to voice service in a highly competitive market and applicable to carriers found to no longer possess market power and declared nondominant in 2016,[21] are not necessary to protect consumers or to ensure that rates are just and reasonable.[22] Thus, the forbearance standard is easily satisfied.

Given the highly competitive voice market, the USTelecom representatives indicated that a lengthy transition period before sun setting the avoided cost resale obligations is unnecessary. Therefore, a transition period, if any, should be no more than 18 months. The USTelecom representatives disputed claims that a longer transition period (up to five years) is necessary to ensure that service for certain customers, such as government agencies, is necessary. While competitors will no longer have the benefit of using an outdated and market-distorting regulatory tool in their negotiations with incumbent carriers, that will not translate to a negative impact on

[20] *See* July 1 Ex Parte at 4-5; June 24 Ex Parte at Appendix A, Appendix B.

[21] *See* Declaratory Ruling, Second Report and Order, and Order on Reconsideration, WC Docket No. 13-3, *USTelecom Petition for Declaratory Ruling That Incumbent Local Exchange Carriers Are Non-Dominant in the Provision of Switched Access Services*, rel. Jul. 15, 2016, para. 21.

[22] *See* Letter from Patrick Halley, Senior Vice President, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141 (filed June 20, 2019).

existing customers. ILECs will continue to offer resold service on commercial terms – the type of resale that currently accounts for about 85 percent of all resale arrangements. And customers that currently require TDM service will continue to have options following forbearance, whether from CLECs purchasing wholesale offerings, alternative competitive carriers, or from the ILECs themselves, whose prices will be constrained by fierce competition.

Prices and practices are policed by competitive market forces, and ILECs lack any ability to raise rates above competitive levels. Likewise, as in other competitive markets characterized by high fixed costs, ILECs retain strong incentives to make their facilities available to resellers, in order to keep traffic on their networks and attract revenues that otherwise would accrue entirely to intermodal competitors. In short, competition is ensuring, and will continue to ensure, that the public interest is met and that competitive carrier end users will continue to have access to the services on which they rely.

Please contact me with any questions.

Sincerely,

_____/s/______

Mike Saperstein
Vice President, Policy & Advocacy

cc: Randy Clarke, Attendees

<u>Industry Attendees</u>
Brendan Haggerty—AT&T
Mary Henze—AT&T
Keith Krom—AT&T
Frank Simone—AT&T
Jeff Lanning—CenturyLink (via phone)
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