

July 24, 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*

Dear Ms. Dortch:

On July 22, 2019, I spoke via phone with Preston Wise, Special Counsel to Chairman Pai, regarding the Draft Notice of Proposed Rulemaking (Draft NPRM) for the Rural Digital Opportunity Fund (RDOF)¹ as well as the Digital Opportunity Data Collection (DODC) item.² On July 23, 2019, Patrick Halley, Senior Vice President, Policy & Advocacy, USTelecom, and I also spoke via phone with Joseph Calascione, Legal Advisor to Commissioner Carr on the same subject. In both conversations USTelecom made the following points, all of which are consistent with prior advocacy:³

- The Draft RDOF NPRM should contain an affirmative link to the DODC, as proposed by USTelecom in its July 22 Ex Parte.⁴ A primary objective of the DODC is to provide a national database of broadband serviceable locations to effectively target universal service funding. The RDOF should take full advantage of the targeting mechanism that DODC will enable to provide broadband access for all Americans.⁵
- The Draft RDOF NPRM should seek comment on USTelecom's alternative RDOF proposal. The item currently seeks general comment on alternatives⁶ but it

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

² *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 (Draft DODC or Draft).

³ See Letter from Mike Saperstein, Vice President Policy & Advocacy, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 19-126, 10-90, 19-195, 11-10 (filed July 22, 2019) (July 22 Ex Parte).

⁴ *Id.* at 2-3.

⁵ Draft DODC at para. 10 (“We 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.”).

⁶ Draft RDOF NPRM at para 13.

should explicitly seek comment on USTelecom's alternative proposal for a two-phase approach. USTelecom's proposal would target completely unserved census block **groups** (CBGs) first, followed by a comprehensive auction of all unserved locations once the DODC revealed which locations require broadband support.⁷

- The section of the Draft RDOF NPRM outlining potential additional performance metrics based on subscribership targets, a concept that USTelecom generally opposes, should take a broader approach to its line of questioning.⁸ The Commission should at first seek to better understand the factors affecting subscribership in rural areas, particularly in USF funded areas, and how they compare to broadband subscribership in urban or suburban areas. Then the Commission could seek comment upon whether subscribership targets are appropriate for a high-cost program and, if so, what rates might be realistic. Additionally, the Commission should ask whether there are there particular challenges associated with marketing and encouraging broadband adoption in rural areas for which it should account.
- In advance of completing the DODC, potential bidders will face uncertainty about the number of locations in the areas for which they are bidding. Recently, issues of location disparities have arisen in the A-CAM⁹ as well as the Rural Broadband Experiment program.¹⁰ The Draft RDOF NPRM should seek comment on the appropriate way to address location count disparities in this program, including whether potential inaccuracies in location counts create too much risk for potential bidders and what the ramifications of potential inaccuracies in location counts are for bidders, awardees, and the auction as a whole. Also, given that the DODC proposes a means of presenting a more accurate depiction of locations, the item should ask whether different rules should apply for the first phase of the auction, where the results of the DODC may not be available, and the second phase, where the bidder is more fully informed of the locations in the bidding areas.
- The implementation of the RDOF marks the first time that a major USF funding mechanism (price cap CAF Phase II model based support) will end and be replaced by a new competitive mechanism with potentially hundreds of new recipients. There are substantial items related to the transition between CAF Phase II model support and the RDOF that the item does not explore but will be

⁷ See July 22 Ex Parte at 1-2. ("The fact that the entire CBG (roughly 39 contiguous census blocks) 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.").

⁸ Draft RDOF NPRM at paras. 39-40.

⁹ See Wireline Competition Bureau Issues Corrected Alternative Connect America Fund Model II Offers to 37 Companies, Extends The election Deadline, and Seeks Comment on Location Adjustment Procedures, WC Docket No. 10-90, Public Notice, DA 19-504 (Jun. 5, 2019).

¹⁰ See Letter from John Kuykendall, JSI Vice President, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 14-58, 07-135 and CC Docket No. 01-92 (filed July 1, 2019).

essential to the success of the program. The Commission has already granted price cap carriers forbearance from their voice obligation when another ETC wins support in a CAF eligible area.¹¹ If a price cap carrier no longer receives support, it also no longer has a CAF obligation to offer broadband. These facts present a number of issues that should be addressed:

- Given the potential gap between the end of the CAF Phase II model-based support term and the authorization of Rural Digital Opportunity Fund support recipients, should the Commission ensure rural consumers continue to have access to broadband and voice services until support is awarded, and if yes, how?
- If the auction winner does not have facilities in place to serve the areas it wins immediately, what are its obligations as the ETC to ensure the supported service (voice) is available throughout the area? Not all areas currently served by a price cap carrier receiving CAF Phase II model support will necessarily be won in an auction. How should the Commission address these situations in order to ensure residents in these areas continue to receive voice and broadband? Is continued model-based funding to the price-cap carrier appropriate until a further auction can produce a new ETC responsible for serving the area?
- If another carrier wins support in an area where a price cap carrier receives CAF Phase II support, are there other Commission rules that need to be addressed in this proceeding to ensure a smooth transition for consumers and providers?

Please contact me with any questions.

Sincerely,

_____/s/____

Mike Saperstein
Vice President, Policy & Advocacy

cc: Preston Wise
Joseph Calascione

¹¹ *Connect America Fund*, Report and Order, 29 FCC Rcd 15644, 15664 at para. 52 (2014).