



The Internet & Television Association
25 Massachusetts Avenue, NW | Suite 100
Washington, DC 20001
(202) 222-2300

Steve Morris
Vice President &
Deputy General Counsel
o (202) 222-2454 e smorris@ncta.com

July 26, 2019

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
455 12th Street SW
Washington, DC 20554

**Re: Modernizing the Form 477, WC Docket No. 11-10
Digital Opportunity Data Collection, WC Docket No. 19-195
Rural Digital Opportunity Fund, WC Docket No. 19-126**

Dear Ms. Dortch,

On July 24, 2019, Steve Morris and Jennifer McKee of NCTA – The Internet & Television Association, Jennifer Prime, on behalf of Cox Communications, Tim Stelzig of GCI, Elizabeth Andron of Charter Communications, and Christine Sanquist of Jenner & Block, on behalf of Charter Communications, met with Arielle Roth, Wireline Legal Advisor to Commissioner O’Rielly, to discuss the Commission’s draft Report and Order and Second Further Notice of Proposed Rulemaking on the Digital Opportunity Data Collection and the draft Notice of Proposed Rulemaking on the Rural Digital Opportunity Fund.¹ On July 25, 2019, Mr. Morris, Ms. Andron, Ms. Sanquist, Barry Ohlson, on behalf of Cox Communications, and Beth Choroser of Comcast, met with Preston Wise, Special Counsel to Chairman Pai, to discuss the same issues. Attached are suggested edits to the draft items that would address the issues discussed during the meeting.

Digital Opportunity Data Collection. NCTA expressed strong support for the proposal in the *Draft Data Collection Order* to require that providers report broadband availability by submitting polygon shapefiles (i.e., electronic coverage maps) that represent the geographic area where a provider offers service. We described how moving to a reporting regime based on polygon shapefiles would address the overstatement of coverage that results under the Commission’s current census block approach in a manner that providers, as well as the Commission, should be able to implement in a timely manner.

¹ See *Establishing the Digital Opportunity Data Collection; Modernizing the Form 477 Data Program*, WC Docket Nos. 19-195, 11-10, Report and Order and Second Further Notice of Proposed Rulemaking, FCCCIRC 1908-02 (rel. July 11, 2019) (*Draft Data Collection Order*); *Rural Digital Opportunity Fund*, WC Docket No. 19-126, Notice of Proposed Rulemaking, FCC-CIR1908-01 (rel. July 11, 2019) (*Draft RDOF Notice*).

We also expressed support for the Commission's proposal to incorporate crowdsourcing to supplement the review of Form 477 filings by Commission staff. We explained that feedback from consumers can be useful in refining the accuracy of any maps the Commission produces, but that such information, particularly online speed test data, may not accurately represent the performance or availability of the service provided and therefore should be used to inform future filings by providers only where it proves to be accurate. For that reason, we questioned the value of publishing unverified information as proposed and encouraged the Commission to direct the Bureaus to evaluate ways to ensure both consumer and provider confidentiality is protected in the crowdsourcing process. In implementing crowdsourcing, NCTA also encouraged the Commission to consider ways to minimize the burden on broadband providers by, for example, having providers respond to feedback in batches.

NCTA also expressed support for the proposed decision to further study and seek additional comment on the proposal advanced by the Broadband Mapping Consortium to create a broadband location fabric that can be used as a background for displaying broadband availability data.² We explained that the *Draft Data Collection Order* correctly finds that there is no need to wait on reforming the reporting requirements for broadband providers while the Commission considers ways to identify specific locations that lack fixed broadband availability. NCTA encourages the Commission to add questions to the Further Notice of Proposed Rulemaking asking whether the creation of a broadband-serviceable location database is necessary or whether alternative information could be used to achieve the same goal. Questions should also be included regarding the cost of establishing a database of broadband-serviceable locations and how such a database would be funded. If USAC is tasked with creating and maintaining such a database, should universal service funds be used and, if so, what effect would that have on the contribution factor? Additionally, the Commission should seek comment on whether to limit the scope of a broadband serviceable-location database to rural areas to focus the Commission's efforts on unserved locations.

In the meeting we also discussed the decision in the draft item to delegate significant responsibility to the Universal Service Administrative Company (USAC) for the creation of a new portal to be used for the filing of deployment data from broadband providers as well as data submitted by any party challenging the accuracy of provider data. The delegation of such broad authority to USAC is unusual and raises many questions. NCTA suggests that a more traditional approach, i.e., delegating authority to the relevant Commission bureaus and offices, which would then direct USAC to take action where needed, is the better approach in this case.

Finally, we explained that additional clarity would be helpful on some of the operational details of the new filing regime. For example, we suggested that the Commission should require the new filing to be done on the same March 1/September 1 schedule as the Form 477. The Commission also should clarify that a provider that upgrades the speeds it offers to consumers should report such an upgrade in the same way that it would report a new deployment of broadband facilities. We also suggested that it would be helpful for the Commission to specify a sunset date for reporting broadband availability on a census block basis on the current Form 477.

² See Letter from Lynn Follansbee, USTelecom, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 11-10 (Mar. 21, 2019).

Rural Digital Opportunity Fund. NCTA explained that it strongly supports the Commission's efforts to move ahead with the RDOF, but that additional questions should be added to the *Draft RDOF Notice* to ensure that the Commission has a complete record on which to make decisions. For example, we discussed the importance of adding questions that would elicit input on how the Commission should gather information on broadband deployment that is being funded by other agencies (e.g., the Rural Utilities Service) to ensure that any new funding from the Commission is efficiently directed to unserved areas.

NCTA also explained that additional questions would be helpful in determining how the Commission should distribute funding to unserved census blocks in the first stage of the RDOF. In particular, the "unserved" blocks in that stage will include both areas where price cap LECs already have received billions of dollars of CAF money pursuant to the right-of-first refusal and areas that have never received broadband funding and where existing processes have been insufficient to attract investment. The draft item should explicitly ask what steps should be taken to ensure that the Commission does not spend more than necessary on this first set of "slow service" blocks and that it finally delivers support to this second set of "no service" blocks. On a related note, the Commission should ask whether the existing cost model accurately estimates the cost in either type of area, and if not, how that might affect the Commission's ability to rely upon it as a method for setting reserve prices for bids.

The Commission also should solicit comment on whether there are alternatives to the proposal in the item that would better achieve the Commission's goals. In particular, the Commission should explicitly ask whether conducting a series of auctions, rather than just two, and using a shorter funding term, rather than 10 years, might be more effective at delivering better broadband to more people.

Respectfully submitted,

/s/ Steven F. Morris

Steven F. Morris

cc: P. Wise
A. Roth

Proposed Edits to RDOF NPRM

1. Term of Support

Add the following new para. 16:

16. In the alternative, a shorter term of support may better align with changes in technology and any increases in broadband speeds that may be achieved over the course of a decade. For instance, the Commission established broadband speed requirements of 10 Mbps download and 1 Mbps upload for the recipients of CAF Phase II model-based support in 2014¹ and five years later is preparing to award additional funding to increase the speeds in those same areas to 25/3 Mbps. Given the need to change the speed benchmark over this five-year period, it may be advantageous to use a similar timeframe for recipients of Rural Digital Opportunity Fund support.

2. RUS Funding

Revise para. 46 as follows:

46. For all census blocks on the initial list of eligible areas, we propose to exclude those census blocks where a terrestrial provider offers voice and 25/3 Mbps broadband service.⁸² We propose to use the most recent publicly available FCC Form 477 data to identify these areas. We also propose to exclude census blocks where a winning bidder in the CAF Phase II auction is obligated to deploy broadband service.⁸³ We also propose to exclude from eligibility locations that have been approved for funding under the United States Department of Agriculture's Rural eConnectivity Pilot Program (ReConnect Program).² We propose to conduct a challenge process for the Rural Digital Opportunity Fund Phase I auction consistent with the process Commission conducted for the CAF Phase II auction, in which the Bureau released a preliminary list and map of initially eligible census blocks based on the most recent publicly available FCC Form 477 data.⁸⁴ Because there is an inevitable lag between the reported deployment as of a certain date and when the data are publicly released, parties would be given an opportunity to identify areas that have subsequently become served.⁸⁵ For example, the most recent publicly available FCC Form 477 was released on June 2, 2019, and reports deployment as of December 31, 2017. Similar to the CAF Phase II auction, it is likely that more recent FCC Form 477 data will be available prior to the Rural Digital Opportunity Fund auction. The final list of eligible areas would be based on the most recent publicly available FCC Form 477 data, but this would give the Bureau an opportunity to compare the preliminary list of eligible areas with the final list to identify any obvious reporting errors.⁸⁶ We seek comment on this proposal.

¹ December 2014 Connect America Order, 29 FCC Rcd at 15649, para. 15.

² See U.S. Department of Agriculture, ReConnect Program Overview, <https://www.usda.gov/reconnect/program-overview> (providing funding for deploying broadband that is "capable of providing service to every premise in the proposed funded service area at a speed of at minimum, 25 Mbps downstream and 3 Mbps upstream.")

3. Distinguishing Between “No Service” and “Slow Service” Unserved Areas

Add the following new subsection G:

G. Treatment of Census Blocks Funded with CAF Phase II Model-Based Support versus Other Eligible Census Blocks

60. As discussed above, we propose to make Rural Digital Opportunity Fund support available to bidders in census blocks that have been funded through CAF Phase II model-based support but where broadband at 25/3 Mbps is not available. Given that price cap carriers in these areas received support based upon the cost model’s estimation of the cost of deploying a greenfield fiber-to-the-premise network,³ it is likely that the full amount of model support would not be necessary to upgrade these areas from the funded speed of 10/1 Mbps to the new required speed of 25/3 Mbps. We therefore seek comment on creating a separate, lower budget applicable to census blocks in these areas.

61. Similarly, price cap carriers are likely to have accepted CAF Phase II model-based support in areas where the cost model correctly predicted or overestimated the cost of deploying service. Conversely, census blocks in areas where no provider has sought CAF Phase II support to date, either through model-based, Rural Broadband Experiment, or CAF Phase II auction funding, are likely to have costs that exceed those estimated by the cost model. It may be inappropriate to rely upon the cost model as a basis for a reserve price in these areas. We seek comment on ways to account for this in seeking bids for previously unfunded areas. Should we eliminate the reserve price and rely solely on an overall budget applicable only to these blocks? Should we consider other ways to encourage funding to these previously unfunded areas? For example, should we conduct multiple auctions beyond the two-phase approach discussed above? Should the budget be split into smaller batches made available through auctions conducted on an annual basis?

³ CAM Platform Order, 28 FCC Red at 5309, para. 18.

Proposed Edits to Data Collection Order and NPRM

1. Delegation to USAC

Remove references to USAC in paras. 11, 15, 18, 19, 20, 35, 76, 87, 97, 98, 103, 106, 108, rule sections 54.1400, 54.1402(b); change “USAC” to “WCB” in paras. 16, 88-96, and rule section 54.1401.

2. Verification of Coverage

Move paras. 28-29 into the Further Notice and revise as follows:

~~2887.~~ ~~USAC~~ Verification of Broadband Coverage Maps. In addition to incorporating feedback from state, local, and Tribal governmental entities, along with the public, we ~~conclude~~believe that we must also take steps to independently verify coverage data submitted by service providers. As part of its Connect America Fund (CAF) responsibility, USAC maintains the High Cost Universal Broadband (HUBB) portal. CAF support recipients report through the HUBB portal latitude and longitude coordinates, address, deployment date, speed, and number of units for every location where service is available. This information forms the foundation for the Connect America Fund Broadband Map.⁵² We ~~direct~~seek comment on ways ~~USAC~~ to integrate the geolocation data contained in the HUBB with the broadband coverage polygons submitted pursuant to the Digital Opportunity Data Collection. We believe that ~~Doing~~ so will benefit our overall understanding of how high-cost support dollars are used in conjunction with overall broadband deployment and will aid the data collection verification effort.

~~2988.~~ In the CAF context, USAC performs real-time validation of the CAF data submitted to the HUBB through a series of automated checks of the information (e.g., that the latitude/longitude falls within an eligible area and that the location is not a duplicate of one already submitted). The HUBB also provides USAC the platform to conduct verification reviews to “substantiate broadband deployment and confirm that carriers are in fact building out service that meets the FCC’s minimum performance standards to the locations reported.”⁵³ Many elements of the process USAC uses for the CAF could potentially be used for verifying broadband deployment data as part of the Digital Opportunity Data Collection.⁵⁴ We therefore ~~direct~~seek comment on using a similar process to verify providers’ broadband deployment data. Should we direct USAC to propose and submit a plan to WCB for independently verifying the fixed broadband coverage polygons filed pursuant to the Digital Opportunity Data Collection? The verification process it proposes to use could parallel how USAC currently verifies deployment data submitted by CAF support recipients’ in the HUBB. ~~USAC~~Are there ~~should propose~~ other appropriate means of verifying the accuracy of filers’ broadband coverage polygons, including site visits? Is USAC the correct entity to carry out these functions or should the Commission verify data in some other way?-

3. Reporting Deadlines

Revise para. 16 and 47 C.F.R. 54.1401 as follows:

16. This new data collection will take effect after USAC/WCB issues a notice announcing the availability of the new collection platform and the reporting deadlines. Fixed broadband service providers must file initial service availability reports at the next Form 477 reporting date, either March 1 or September 1, that gives providers at least six months to prepare~~within six months of USAC's notice announcing availability of the new collection platform. After the initial filing, Fixed providers also~~ must submit updates sd data reporting within six months of completing any new broadband deployments, or otherwise acquisitions ring of new broadband-capable network facilities, or speed upgrades on March 1 for the period July through December, and on September 1 for the period January through June, consistent with the Form 477 filing deadlines, that affect the data submitted on their Digital Opportunity Data Collection filings. Service providers that become subject to filing requirements subsequent to the initial filing deadline must file initial service availability reports at the next filing deadline of March 1 or September 1, within six months of becoming so obligated. Failure to timely file the new collection data may lead to enforcement action and/or penalties as set forth in the Communications Act and other applicable laws. In addition, fixed providers must revise their filings any time they discover a significant reporting error in the original broadband deployment data that they submit. An appropriate official of each filer must include with any filing a certification that the filer's service availability data is true and accurate to the best of the certifying official's knowledge and must report the title of the certifying official. Filers must additionally certify on or before June 30 of each calendar year that as of December 31 of the previous year, all of the filer's service availability data continues to be accurate, irrespective of whether the filer's data has been updated during that calendar year.

§ 54.1401 Frequency of reports.

Entities subject to the provisions of this subpart shall file initial reports pursuant to the Digital Opportunity Data Collection ~~within six months after the Universal Service Administrative Company issues a notice announcing the availability of the new Digital Opportunity Data Collection platform, at the next upcoming filing date of March 1 or September 1 that gives providers at least six months to prepare.~~ Thereafter, Digital Opportunity Data Collection filers must submit updates sd data reporting within six months of completing any new fixed broadband deployments, or the acquisitions of new network facilities that have fixed broadband connections, or speed upgrades that change the data submitted on their current Digital Opportunity Data Collection filing on March 1 for the period July through December, and on September 1 for the period January through June. Entities that become subject to the provisions of this subpart for the first time after the initial filing deadline shall file their initial reports at the next filing deadline of March 1 or September 1~~within six months after they become eligible and shall report data for that initial period.~~ All eligible entities must file a certification once per year on or before June 30th that as of December 31st of the previous year all of the filers' data continues to be accurate, subject to any updates made by the filer through June 30th of that calendar year.

4. Sunset of Form 477

Revise para. 131 as follows:

131. Over the long term, we expect the Digital Opportunity Data Collection will largely displace the Form 477 process, at least with respect to the collection of granular deployment data. We therefore seek comment on discontinuing the broadband deployment data collection that is part of Form 477 ~~at some point~~ after the new collection has been established. Specifically, we propose to eliminate collection of Form 477 broadband deployment data after we have collected two cycles of data under the Digital Opportunity Data Collection. We seek comment on this proposal. Under what conditions would eliminating that part of the broadband data collection be appropriate? Are there other portions of the Form 477 collection we should consider sunsetting as well?

5. Crowdsourced Data

Revise para. 18, delete paras. 19 and 20, revise para. 88, and add a new para. 89 as follows:

18. Incorporating Public Input into Broadband Coverage Maps. Collecting broadband coverage polygons will allow fixed providers to apply their expertise concerning their networks and service areas to define their service coverages in the first instance. However, input from the people who live and work in the areas that a service provider purports to serve also plays a vital role in ensuring the quality of these maps, helping to identify areas where the data submitted do not align with the reality on the ground. We therefore direct OEA, WCB, and IB to work with USAC to create an online portal for local, state, and Tribal governmental entities and members of the public to review and dispute the broadband coverage polygons filed by fixed providers under the new collection. This input will identify locations where a member of the public or a governmental entity indicates that the fixed provider is not able to provision broadband service despite the location being within a broadband coverage polygon. We also direct WCB to allow providers to designate Form 477 subscriber data as “Highly Confidential” to mitigate concerns that this data could be combined with the more granular deployment information depicted in the publicly available broadband coverage polygons in an anti-competitive way. We also seek comment in the Second Notice about the types of data to be collected through this portal, how to treat crowdsourced data, and the procedures that fixed providers should follow if their broadband coverage polygons are disputed.

88. ~~At a high level, w~~We seek comment on the best way to propose that USAC track coverage disputes, follow-up with providers to ascertain whether there is agreement that there is a problem with the data, and ensure that providers refile updated and corrected data in a timely fashion. ~~We propose that USAC~~Should WCB create a system to track complaints about the accuracy of fixed broadband coverage polygons.²²² This functionality could be similar to the Commission’s existing consumer-complaints database.²²² Having a tracking system would allow ~~USAC~~WCB to pass the complaints along to the appropriate provider and track whether the person filing the complaint

received a response. In instances where the provider agreed that its original filing was in error, USAC/WCB could track the error and ensure that the provider corrects its data. Alternatively, USAC/WCB could simply publish the complaints it receives and require providers to periodically check complaints about their filings. Is this a reasonable burden to place on providers? How could USAC/WCB efficiently track which of the complaints should be and ultimately are addressed through data corrections? How can we develop mechanisms in the new platform to prevent malicious or unreliable filings, including automated mass filings?

89. We seek comment on whether to make some types of data collected in this process available to the public. Should we make public the information about the location that is the subject of the dispute—including the street address and/or coordinates (latitude and longitude) provided by the complainant, along with the name of the service provider(s) and any relevant details concerning the basis for challenging the reported fixed broadband coverage? Are there privacy concerns if we do so? How can we ensure that confidential data of consumers and providers are adequately protected in the crowdsourcing reporting process?

6. Feasibility and Cost of Creating a Broadband Location Database

Make the following revisions and additions to paras. 98, 100, 103, and 106:

98. One potential way to ~~We note that the first step in~~ incorporating location data is to establish a process where all broadband-serviceable locations (e.g., houses, businesses, structures) are mapped using a single methodology, providing a harmonized reference point for fixed broadband reporting.²²⁹ Toward that end, the Broadband Mapping Coalition is in the process of testing a “Broadband Serviceable Location Fabric” to demonstrate the viability of a location-based proposal.²³⁰ The Broadband Mapping Coalition’s testing represents a concrete effort to identify the issues facing USAC in moving to a location-based collection. We seek comment on whether the creation of such a fabric is necessary. Are there other sources of information that we could rely on to achieve the same purpose?

100. Should we decide that, for residential users, the location would be the individual housing unit?²³³ For residential Multi-Tenant Environments (e.g., apartment buildings), this could mean treating each individual apartment or unit as a separate broadband-serviceable location. We do not believe this approach is appropriate for determining fixed broadband coverage in a Multi-Tenant Environment—fixed providers likely would not offer service only to some units in a Multi-Tenant Environment. Additionally, we are concerned that the added complexity—far more locations and the need to differentiate not just latitude and longitude, but also potentially altitude—would outweigh any benefits. We seek comment on this assumption. Should there be other limitations on the locations included in the broadband location database? Should we focus our efforts in identifying broadband locations in rural areas? If so, how should rural areas be defined? We seek comment on the costs and benefits of tracking serviceable locations in urban areas.

103. We note that there are a limited number of data sources against which USAC could check such a dataset. The U.S. Census Bureau publishes block-level data, including the number of housing units, but only every ten years and Census data do not generally include business locations. We seek comment on whether the less granular county-level housing estimates the Census publishes yearly could be used as a data source for dataset verification. Furthermore, if we define a location as a parcel or building (rather than a housing unit), we would not expect the counts to match the Census data. The National Address Database and Open Address Database each provide a list of addresses and point locations for areas where they have coverage. Neither is a complete nationwide dataset, though they could be useful for checking areas where they have data. Each of these datasets has challenges, however. For example, the data in the National Address Database do not appear to be updated on a regular schedule and often have multiple points for a given address (e.g., from state, county and local government), making it hard to get a count of points in a given area. We seek comment on whether or how we can make use of such data sources. We also seek input on whether there are other sources we should be aware of that could be useful as a check of, or alternative to, a broadband-addressable location database.

106. With regard to the Broadband Mapping Coalition's location-based proposal, we seek comment on the use of two distinct data products used by the Broadband Mapping Coalition: a database of broadband-serviceable locations and a "lookup" tool for integrating provider addresses data into the locations database. What are the costs of the Commission developing these tools? USTelecom estimates the cost is approximately \$10 million for the initial fabric with additional expenses to keep it updated. Is this estimate accurate, and if so, is this level of cost warranted? How would the database and the lookup tool be funded? If we direct USAC to create one or both of these tools, would the costs be borne by the universal service fund, and, if so, how much would the contribution factor increase? We seek comment on whether the lookup tool would be necessary given our adoption of availability-map reporting in the accompanying Order. . .