

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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| In the Matter of |) | |
| |) | |
| Rural Digital Opportunity Fund |) | WC Docket No. 19-126 |
| |) | |
| Connect America Fund |) | WC Docket No. 10-90 |
| |) | |

COMMENTS OF NCTA – THE INTERNET & TELEVISION ASSOCIATION

NCTA – The Internet & Television Association (NCTA) submits these comments in support of the Commission’s proposal to create the Rural Digital Opportunity Fund as the next step in providing high-cost universal service support for broadband deployment in areas that need it most.¹ We agree with the Commission’s plan to award support through competitive bidding, and to distribute the first batch of funding in census blocks that are wholly unserved.² To ensure that this funding is used as efficiently as possible, the Commission should decline to provide funding to areas that are receiving federal grants from the Rural Utilities Service’s ReConnect Program, and should target support to census blocks that have not previously received Connect America Fund (CAF) support versus those where incumbent local exchange carriers (LECs) received funding to provide broadband at slower speeds.

¹ *Rural Digital Opportunity Fund*, WC Docket Nos. 19-126 and 10-90, Notice of Proposed Rulemaking, FCC 19-77 (Aug. 2, 2019) (*Rural Digital Opportunity Fund NPRM*).

² *Id.* ¶ 12.

I. PRIORITIZE SUPPORT TO THE AREAS THAT NEED IT MOST

A. Distinguish Between Census Blocks That Previously Received CAF II Model Support and Those That Did Not

The Commission is proposing to make Rural Digital Opportunity Fund support available in census blocks where no provider is offering voice service and broadband service at speeds of 25 Mbps download and 3 Mbps upload.³ Many census blocks that will be eligible for Rural Digital Opportunity Fund support are in areas where incumbent LECs currently are receiving CAF Phase II model-based support to provide slower speed (10/1 Mbps) service.⁴ In 2015, the Commission awarded these incumbent LECs more than \$9 billion to bring 10/1 Mbps broadband service to these areas over a six year period.⁵ This funding was not subject to competitive bidding, but was instead offered only to incumbent LECs based upon a model estimation of the costs of providing a greenfield fiber-to-the-premises network.⁶ In contrast to these areas where consumers should be receiving broadband at 10/1 Mbps through a previous round of high-cost universal service funding, consumers in other census blocks eligible for Rural Digital Opportunity Fund support will have no ability to receive broadband at 10/1 Mbps speeds.

The Commission correctly asks whether it should prioritize funding to these completely unserved census blocks, and it absolutely should do so. Specifically, the Commission should adjust the reserve prices it sets to account for blocks with and without 10/1 Mbps speed

³ *Id.* ¶ 16.

⁴ *Id.* ¶ 46; *Connect America Fund*, WC Docket Nos. 10-90, 14-58, and 14-192, Report and Order, 29 FCC Rcd 15644, 15649, ¶ 15 (2014).

⁵ *Carriers Accept Over \$1.5 Billion in Annual Support from Connect America Fund to Expand and Support Broadband for Nearly 7.3 Million Rural Consumers in 45 States and One Territory*, FCC News Release, <https://docs.fcc.gov/public/attachments/DOC-335082A1.pdf> (Aug. 27, 2015).

⁶ *Connect America Fund*, WC Docket Nos. 10-90 and 05-337, Report and Order, 28 FCC Rcd 5301, 5309, ¶ 18 (Wireline Comp. Bur. 2013).

broadband service. In high-cost census blocks where no provider offers broadband of 10/1 Mbps and where no provider has sought CAF Phase II support to date, either through model-based, Rural Broadband Experiment, or CAF Phase II auction funding, the costs of providing service are likely to exceed those estimated by the cost model. It would be counterproductive to rely on the model to set a reserve auction price in these areas. Instead, the Commission should increase the model estimate by a set percentage to encourage providers to bid in these areas.⁷ The Commission should also consider increasing the reserve price in subsequent bidding rounds in census blocks without 10/1 Mbps service where no bids are received.

As discussed above, incumbent LECs that have received CAF Phase II model-based support were provided funding based on the costs of building a fiber-to-the-premises network. These amounts seemed excessive at the time given that the incumbent LECs were not, in fact, required to build fiber-to-the-premises networks, and subsequent experience with competitive bidding confirmed that other providers are able to provide faster service with far smaller subsidies.⁸ Accordingly, in setting a reserve price, the cost model's estimate should be significantly lowered to account only for the costs of upgrading an already deployed network capable of providing 10/1 Mbps to one capable of providing 25/3 Mbps.⁹ While this will not

⁷ The Commission is proposing to include as eligible for Rural Digital Opportunity Fund support census blocks that were found to have lower costs according to the cost model. *Rural Digital Opportunity Fund NPRM*, ¶ 53. Because these census blocks would not have been eligible for previous rounds of funding, the Commission could use the model's estimated cost without adjustment as the initial reserve price in these areas.

⁸ *Connect America Fund Auction to Expand Broadband to Over 700,000 Rural Homes and Businesses*, FCC News Release, <https://docs.fcc.gov/public/attachments/DOC-353840A1.pdf> (Aug. 28, 2018) ("Although the 713,176 locations assigned had an initial reserve price of \$5 billion over the next decade, the final price tag to cover these locations is now only \$1.488 billion.").

⁹ There may be census blocks where a non-incumbent LEC provider has deployed broadband facilities capable of providing 10/1 Mbps without receiving CAF support. The Commission should use the same lowered cost model reserve price in such areas because, in theory, the provider with existing network facilities would be able to bid for support and should need less support to upgrade its facilities. To the extent the provider is unable to bid due to the eligible telecommunications carrier (ETC) restriction, the Commission should consider forbearing from this requirement as discussed below to avoid overbuilding a provider that has deployed facilities without the use of universal service funds.

fully offset the significant advantage the incumbent LECs will enjoy in the auction due to the fact that they are government-subsidized providers in these areas, reducing the reserve price will help to ensure that the universal service fund does not once again pay more than necessary to serve these areas.

B. Exclude Areas Supported by Other Programs

As discussed above, to ensure that funding is prioritized to the areas most in need of broadband, the Commission should adjust its auction reserve prices upward to encourage bidding in areas that lack 10/1 Mbps service, and should decrease the reserve price in areas where 10/1 Mbps service already exists. In addition to focusing funding in this manner, the Commission should target Rural Digital Opportunity Fund support to areas where future subsidies have not been committed.

The Commission should adopt its proposal to exclude from eligibility census blocks where a winning bidder in the CAF Phase II auction is obligated to deploy broadband, including areas to be served by winning bidders in the New NY Broadband Program.¹⁰ These areas already are receiving federal support for broadband deployment, and it would be an inefficient and wasteful use of universal service funding to award duplicative Rural Digital Opportunity Fund support in the same places. Similarly, the Commission should exclude from eligibility locations that have been approved for grant funding under the United States Department of Agriculture's Rural eConnectivity Pilot Program (ReConnect Program).¹¹ There is no need to provide universal service funding in areas where ReConnect Program grants will be supporting

¹⁰ *Rural Digital Opportunity Fund NPRM*, ¶ 48 and n.91.

¹¹ 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.”)

the deployment of broadband at 25/3 Mbps. The Commission also should consider eliminating from eligibility areas that have received or are committed to receive funding to reach 25/3 Mbps broadband through state support programs.

C. Conduct a Robust Challenge Process

To guard against the possibility of Rural Digital Opportunity Fund support going to overbuild existing providers, the Commission should conduct a thorough challenge process.¹² In addition to allowing existing providers to identify areas where they now provide service, the Commission should also entertain challenges by CAF Phase II auction recipients demonstrating areas where they will be deploying broadband meeting the Rural Digital Opportunity Fund requirements. For example, Midco was awarded CAF auction support to provide service to a set number of locations, but when its fixed wireless buildout is completed, Midco will serve not only the committed CAF locations but some additional previously unserved locations as well.¹³ It would be unnecessary and wasteful to provide Rural Digital Opportunity Fund support in these areas where it is unneeded. The Commission should seek information on similar areas to be served with CAF auction support in the Rural Digital Opportunity Fund challenge process.

II. ENCOURAGE PARTICIPATION BY A WIDE ARRAY OF BROADBAND PROVIDERS

Some of the areas that will be eligible for support under the Rural Digital Opportunity Fund include census blocks where no provider to date has been willing to accept funding to provide broadband. These areas are likely to be extremely high-cost and difficult to serve. The

¹² *Rural Digital Opportunity Fund NPRM*, ¶ 48.

¹³ Letter from Nicole Tupman, Assistant General Counsel, Midco, to Marlene H. Dortch, Secretary, Federal Communications Commission, AU Docket No. 17-182, WC Docket No. 10-90, Attach. at 6 (May 15, 2019).

Commission should maximize the number of providers that would be eligible to bid for support in these areas.

A. Consider Forbearing from the ETC Requirement

One way the Commission could increase its broadband provider bidding pool is to forbear from the requirement that a provider be designated as an ETC to receive Rural Digital Opportunity Fund support.¹⁴

When the focus of the program is on providing broadband to unserved areas, it makes little sense to continue to require providers to be certified telecommunications carriers. The statutory requirement was adopted at a time when providing traditional telecommunications voice service to consumers was the primary goal of high-cost support and when incumbent LECs were the predominant, and in some cases only, providers of this service. Retention of the ETC requirement does not further any of the goals identified by the Commission for the Rural Digital Opportunity Fund:

“(1) ensuring that high-speed broadband is made available to all Americans quickly, and at an affordable price; (2) reducing waste and inefficiency in the high-cost program and promoting the use of incentive-based mechanisms to award support; (3) requiring accountability to ensure that public investments are used wisely to deliver intended results; and (4) minimizing the contribution burden.”¹⁵

To the contrary, increasing the number of broadband providers eligible to compete for funding would achieve these goals without in any way minimizing the Commission’s ability to ensure accountability in the use of the funding. Moreover, because recipients will still be required to

¹⁴ *Rural Digital Opportunity Fund NPRM*, ¶ 90; 47 U.S.C. § 254(e).

¹⁵ *Rural Digital Opportunity Fund NPRM*, ¶ 13.

provide voice service, the needs of consumers in supported areas will be fully met. Finally, the Commission could impose the same substantive requirements contained in section 214(e) for ETCs on Rural Digital Opportunity Fund recipients as a condition of receiving support, so retention of the ETC requirement is unnecessary.

B. No Subscription Milestone Requirements

NCTA encourages the Commission not to adopt requirements for Rural Digital Opportunity Fund recipients to meet subscribership milestones as a condition to receiving support. In the *Rural Digital Opportunity Fund NPRM* the Commission seeks comment on a proposal to require Rural Digital Opportunity Fund recipients to meet set benchmarks for subscribership, ending with a potential 70 percent subscribership.¹⁶ Funding recipients would lose support if they fail to meet the predetermined subscribership goals.¹⁷ This proposal changes the focus of the Rural Digital Opportunity Fund from a broadband deployment mechanism to a broadband adoption mechanism, placing the burden of guaranteeing adoption on the provider.

The goal of the Commission's universal service high-cost support programs has always been to ensure that robust and affordable services are available to people living in rural, tribal, and other high-cost areas. The Commission proposes that the first goal of the Rural Digital Opportunity Fund should be "ensuring that high-speed broadband is made available to all Americans quickly, and at an affordable price."¹⁸ Requiring providers not only to provide broadband services in high-cost areas, but also to ensure that residents in these areas purchase the

¹⁶ *Id.* ¶¶ 41-42.

¹⁷ *Id.* ¶ 42.

¹⁸ *Id.* ¶ 13.

services would add a level of uncertainty into the funding mechanism, including how much support would be needed to spur adoption in an area, and could potentially deter bidders.

Providers, including recipients of Rural Digital Opportunity Fund support, have an incentive to obtain as many paying customers as possible. However, some people may choose not to subscribe to broadband service for reasons that are not within a provider's control.¹⁹ A provider that has used Rural Digital Opportunity Fund support to make robust, affordable broadband service available should not be penalized by residents' decisions not to subscribe to broadband.

C. Allow the Same Flexibility for Funded Locations as in the CAF Phase II Auction

The Commission should adopt its proposal to allow Rural Digital Opportunity Fund providers the same flexibility in their service obligations as is afforded to recipients of CAF Phase II auction support.²⁰ Specifically, if the number of locations for which a recipient is awarded funding exceeds the actual number of locations available to be served in the area, the provider should be able to bring this disparity to the Commission's attention and reduce its service obligations and support amount accordingly.²¹ A provider should also refund support if it serves 95 percent or fewer locations for which it was awarded support.²²

¹⁹ According to a recent Pew Research report, 27% of Americans nationwide do not subscribe to broadband at home, and this number increases to 37% in rural areas. Many of these people prefer to rely exclusively on mobile broadband, and 80% of the non-adopters report that they have no interest in subscribing to broadband in the future. Monica Anderson, *Mobile Technology and Home Broadband 2019*, Pew Research Center, https://www.pewinternet.org/wp-content/uploads/sites/9/2019/06/PI_2019.06.13_Mobile-Technology-and-Home-Broadband_FINAL2.pdf, 4, 8, 10 (June 13, 2019).

²⁰ *Rural Digital Opportunity Fund NPRM*, ¶¶ 29-30.

²¹ *Id.* ¶ 30.

²² *Id.* ¶ 29.

D. Simplify the Application Process

The Commission should take steps to encourage bidder participation in the Rural Digital Opportunity Fund by streamlining the application process as much as possible. Specifically, the Commission should adopt its proposal to require less information from existing providers that currently are providing broadband service and have been doing so for some time.²³

Similarly, the Commission should consider eliminating the letter of credit requirement for these providers. As the Commission has recognized, its letter of credit rules “may impose significant costs” on auction funding recipients.²⁴ This requirement has led to well-established broadband providers declining to participate in past high-cost support auctions, not because they are likely to default on their obligations, but because the Commission’s letter of credit requirements are extremely burdensome and may conflict with obligations companies have to existing banks and lenders. As a result, fewer bidders participate and areas remain unserved, or support is awarded in greater amounts than would otherwise be necessary. The Commission should eliminate this requirement for well-established broadband providers that can demonstrate financial stability in less cumbersome ways, particularly if these providers have participated in other universal service programs without defaulting on any obligations.

CONCLUSION

To ensure that broadband services are made available to the largest number of Americans possible, the Commission should act quickly to implement the Rural Digital Opportunity Fund. Priority should be given to areas where 10/1 Mbps broadband service currently is unavailable

²³ *Id.* ¶ 80.

²⁴ *Connect America Fund*, WC Docket Nos. 10-90, 14-58, 14-259 and AU Docket No. 17-182, Order on Reconsideration, 33 FCC Rcd 1380, 1406, ¶ 65 (2018).

and the Commission should take steps to ensure that funding is used as efficiently as possible and that as many providers as possible are able to participate.

Respectfully submitted,

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