

**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 |

COMMENTS OF THE UTILITIES TECHNOLOGY COUNCIL

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SUMMARY

UTC supports the Commission's proposal to establish the Rural Digital Opportunity Fund (RDOF) to provide \$20.4 billion for broadband access to unserved and underserved areas of America. Therefore, UTC agrees with the Commission's proposal to budget \$16 billion for Phase I and \$4.4 billion for Phase II of the RDOF. UTC also supports the Commission's proposal to conduct a multi-round, descending clock auction to award funding through competitive bidding. In that regard, UTC supports the use of weighting factors to simultaneously compare different bids for projects proposing different capabilities in different parts of the country; however, UTC recommends increasing the speeds for certain performance tiers as well as adjusting the weighting factors to more appropriately balance the public-interest benefits in favor of higher speeds, higher usage allowances, and low latency. Further, UTC recommends that the Commission use census blocks as the minimum geographic size for purposes of competitive bidding.

UTC believes that the Commission should invest available funding in future-proof technologies that will keep pace with increasing consumer demands and provide access to broadband in rural areas that is reasonably comparable to the quality and cost of broadband services in urban areas. In order to preserve available funding and provide broadband as widely as possible, the Commission should focus first on serving high-cost areas that currently lack access to broadband speeds of 25/3 Mbps, and defer auctioning extremely high cost areas until Phase II of the RDOF.

To ensure that applicants are legally, technically and financially qualified and that winning bidders actually provide broadband services with the speeds, latency and coverage that they proposed in their applications, the Commission should establish more detailed reporting requirements backed by stronger enforcement mechanisms for failure to meet milestones. Similarly, the Commission should disqualify winning bidders who default on their performance requirements or whose long-form applications are denied or dismissed by the Commission; and the next lowest bidder for those census blocks should be awarded the funding. Finally, UTC agrees with the use of additional performance

targets, such as safeguards to ensure sufficient spectrum access by providers and subscribership specifications, as ways of measuring whether projects are truly providing broadband services that customers want and can affordably access.

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COMMENTS OF THE UTILITIES TECHNOLOGY COUNCIL

The Utilities Technology Council (“UTC”) hereby files the following comments in response to the Commission’s Notice of Proposed Rulemaking in the above-referenced proceeding.¹ UTC supports the Rural Digital Opportunity Fund (“RDOF”) and agrees with the Commission’s proposals to provide additional funding for projects to provide access to broadband services in unserved and underserved areas. Generally, UTC agrees that the funding should be made available through competitive bidding that would be conducted in two phases with most of the money being made available in Phase I of the auction. Moreover, UTC also agrees with the proposed overall budget, because significantly more funding will be necessary through the RDOF than was made available through CAFII in order to promote access to broadband speeds of 25/3 Mbps in areas that are currently unserved or underserved.

UTC believes, however, that the Commission’s goals to promote broadband access at higher speeds and lower latency most effectively and efficiently may be best achieved by developing competitive-bidding rules that will result in the deployment of future-proof technologies in targeted areas that lack access to broadband services that are reasonably comparable—in both cost and quality-- to the levels of broadband service that are available in urban areas. To ensure that consumers receive access to broadband services reasonably comparable services in urban areas, the Commission should increase the

¹ Rural Digital Opportunity Fund, *Notice of Proposed Rulemaking*, WC Docket No. 19-126 (released Aug. 2, 2019)(hereinafter “*NPRM*”).

minimum broadband speeds to 100/20 Mbps as the Baseline tier and 250/50 Mbps in the Above Baseline tier. In addition, or alternatively, the Commission should adjust the weighting factors to more heavily favor projects that would provide faster speeds and lower latency, including a weighting factor in favor of synchronous speeds. Moreover, to preserve available funding and provide broadband as widely as possible, the Commission should focus first on serving high cost areas that currently lack access to broadband speeds of 25/3 Mbps, and defer auctioning extremely high cost areas until Phase II of the RDOF.

To ensure that winning bidders actually provide broadband services with the speeds, latency and coverage that they proposed in their applications, the Commission should establish more detailed reporting requirements backed by stronger enforcement mechanisms for failure to meet milestones. Similarly, the Commission should disqualify winning bidders who default on their performance requirements or whose long-form applications are denied or dismissed by the Commission; and the next lowest bidder for those census blocks should be awarded the funding. Finally, UTC agrees with the use of additional performance targets, such as safeguards to ensure sufficient spectrum access by providers and subscribership specifications, as ways of measuring whether projects are truly providing broadband services that customers want and can affordably access.²

I. Introduction and Interest of UTC in the Proceeding

UTC is the international association for the telecommunications and information technology interests of electric, gas and water utilities and other critical infrastructure industries. UTC's 392 core utility members own, manage and control extensive wireline and wireless communications systems that they use to support the safe, reliable and secure delivery of essential energy and water services. Many utilities also have deployed broadband networks and are providing wholesale and retail communications services, including unserved and underserved areas. Utilities are uniquely positioned to provide

² Although UTC supports the use of subscribership specifications, UTC believes that the subscribership specifications should be lower than what is suggested within the *NPRM*, as described more fully below.

broadband services because they are located in unserved areas and are committed to the communities they serve. Not only do utilities provide broadband to communities in their own service areas, but they provide broadband services to nearby communities as well. In addition, utilities provide backbone connectivity and infrastructure access, thereby enabling the provision of broadband services to unserved and underserved areas by third parties.

UTC has been an active participant in the FCC's proceedings related to the Connect America Fund, and UTC applauds the Commission's initiative to provide additional funding to promote broadband access through the Rural Digital Opportunity Fund. Utilities were awarded over \$260 million from the FCC in the CAF Phase II auction, and UTC looks forward to promoting opportunities for utilities to access additional funding from the FCC in the RDOF to help to provide broadband services to unserved areas. Throughout the FCC's CAFII proceeding and in other proceedings at the FCC and elsewhere, UTC has argued for policies that would promote broadband access with higher speeds, lower latency and better reliability, and we argued that competitive bidding would make efficient use of federal funding while providing better quality of service to customers. The success of the CAFII auction broke barriers and surprised skeptics, resulting in high-speed broadband service to over 700,000 households and small businesses in 45 states, with 99.75% of locations receiving at least 25/3 Mbps service and more than half receiving at least 100/20 Mbps service.³ Accordingly, UTC supports the FCC's proposals in the *NPRM* to conduct competitive bidding and provide more funding to support greater broadband access, including areas that currently lack access to 25/3 Mbps services, which we believe will produce even more successful results both in terms of broadband access and efficient use of available funds.

Utilities are deploying broadband networks and providing broadband services in many areas that were previously unserved or underserved. In many if not most cases, they are deploying fiber-to-the-home networks and providing broadband services with various tiers ranging up to gigabit speeds and for prices that are less than \$100/month. In addition, many utilities are providing broadband connectivity

³ *NPRM* at ¶2.

into unserved areas and providing infrastructure access that enables third party providers to reach unserved areas to provide broadband services. Utilities have proven that it is indeed possible to provide broadband services into these areas where no one else would and where no one thought fiber based services could be deployed economically. The customer response has been overwhelming, with many utilities reporting take rates of 70 percent or higher in certain areas. As Commissioner Carr has stated, this provides economic opportunities and improves the quality of life for consumers in these areas.⁴ It also proves that consumers in these areas want, need, and will pay for broadband services with higher speeds. Most utilities generally report that their most popular Internet service package is 50-100 Mbps, even though they offer lower speed packages. Moreover, it proves that consumers in these areas will subscribe to broadband Internet when the price is affordable. These statistics prove that consumers in rural America want and will buy broadband services that are reasonably comparable in quality and price compared to those services that are available in urban areas.

UTC believes that the *NPRM* represents a significant opportunity to promote broadband access and utilities should be encouraged to compete for access to this funding as a means to help underwrite the high cost of providing broadband into unserved areas. As Chairman Pai recognized, CAFII funding is helping electric cooperatives like East Central Electric Cooperative in Oklahoma to provide gigabit-speed connections to thousands of locations, including many occupied by Tribal residents of the Creek Nation.⁵ UTC agrees with the Chairman's goal of achieving similar results on an even greater scale from the Rural Digital Opportunity Fund.⁶ The RDOF proposes funding over ten years for broadband; so the decisions that are made in this proceeding will shape the deployment of broadband for a generation to come. That is why it is so important that we make the most of this opportunity and UTC thanks the Chairman and the

⁴ Statement of Commissioner Carr, *Rural Digital Opportunity Fund*, WC Docket No. 19-126; *Connect America Fund*, WC Docket No. 10-90 .at 1.

⁵ Statement of Chairman Ajit Pai, *Rural Digital Opportunity Fund*, WC Docket No. 19-126; *Connect America Fund*, WC Docket No. 10-90 .at 1

⁶ *Id.*

Commission for making bringing this opportunity to reality.

II. Term of Support

In the *NPRM*, the Commission proposes to establish a term of support that is ten years in length and seeks comment on this proposal.⁷ UTC supports the Commission's proposal for a ten-year term of support. As the Commission stated, this would be consistent with the term of support for CAFIL. Moreover, this would encourage investment in broadband networks and attract participation in the RDOF auction. UTC agrees with the Commission that a 10-year term of support would provide regulatory certainty needed to encourage investment in broadband deployment in high-cost areas and attract participation from a wide variety of participants, such as utilities, in the RDOF auction. Accordingly, UTC supports the Commission's proposal for a 10-year term of support.

III. Budget

In the *NPRM*, the Commission proposes to establish a budget of \$16 billion for Phase I of the auction and \$4.4 billion for Phase II of the auction. UTC supports the proposed budget and the Commission's proposal to have an aggregate reserve price that well exceeds the auction budget by expanding the eligible census blocks beyond those used in calculation of the budget, modifying the reserve prices from those used in the budget calculation, and adjusting the budget from \$20.4 billion to \$16 billion. To be sure, if the Commission bases eligibility on access to 25/3 Mbps services, there will be significantly more eligible unserved locations that will require funding in order for providers to deploy broadband networks that are cost-effective and sustainable, and which will provide robust and reliable broadband services at affordable prices.⁸ For that reason alone, UTC supports the Commission's proposal to budget \$16 billion in Phase I for unserved areas. As the Commission notes, the \$16 billion also reflects

⁷ *NPRM* at ¶15.

⁸ The Bureau staff estimates that there are 3.9 million locations without access to 25/3 Mbps broadband services. See *NPRM* at ¶16.

the sum of the total amount of CAF Phase II model-based support currently received by price cap carriers (\$1.5 billion per year) and the support amount the Commission once envisioned for the Remote Areas Fund (at least \$100 million per year). So, the Commission is right to budget at least \$16 billion for Phase I to provide funding that is consistent with its previous levels of support. That said, UTC recommends that the Commission reassess the adequacy of the total budget after the Phase I auction.⁹ It may be necessary to provide additional funding for locations in high-cost areas that remain unserved after Phase I, which should remain the Commission’s first priority and where any available funding would result in the most locations gaining access.

IV. A Multi-Round, Descending Clock Auction

In the *NPRM*, the Commission proposes to conduct a multi-round, descending clock auction, similar to the successful CAFII auction.¹⁰ In support of this proposal, the Commission reiterates its preference for a multi-round auction because multiple rounds enable bidders “to make adjustments in their bidding strategies to facilitate a viable aggregation of geographic areas in which to construct networks and enable competition to drive down support amounts.”¹¹ In addition, the Commission proposes to use weighting factors to compare bids for different areas at different performance tiers and latency levels, so bids that propose to meet one set of performance standards will be directly competing against bidders that propose to meet other performance standards. In that regard, the Commission proposes to calculate the implied annual support amount at a bid percentage by adjusting an area-specific reserve price for the bid percentage and the weights for the performance tier and latency combination of the bid, with implied support not exceeding the reserve price.¹² Finally, the Commission proposes to include all

⁹ See *NPRM* at 18 (inviting comment on whether the Commission should reassess the adequacy of the total budget after the Phase I auction.)

¹⁰ *NPRM* at ¶19.

¹¹ *Id.* at ¶20.

¹² *Id.* ¶

Phase I eligible areas nationwide in one auction, so that bidders compete for support across all areas at the same time; and it invites comment on whether the minimum geographic size for bidding should be one or more eligible census blocks.¹³

In response, UTC supports the Commission's proposal to conduct a multi-round, descending clock auction and use weighting factors to compare different bids from providers using different technologies in different areas so that all the bidders are competing with each other nationwide.¹⁴ UTC agrees with the Commission that this is likely to repeat the successful results achieved in CAFII. Specifically, UTC agrees with the Commission that such an auction will help to promote efficient bidding, which should result in bids that significantly beat the budget, similar to what happened in CAFII. Moreover, the results of the RDOF auction are likely to yield even more efficient use of the available funding because there won't be a right-of-first-refusal (ROFR) by price-cap carriers for model-based support and instead all entities will compete with each other for available funding. Finally, a nationwide auction should further promote efficient and effective use of available funding, spreading the Phase I funding for high-cost unserved areas across the country. That said, UTC believes that the Commission can build upon the success of the CAFII auction by modifying the auction rules in certain respects.

First and foremost, the Commission should adjust the weighting factors as described more fully below in order to fairly compare bids using different technologies. At the same time, the Commission should increase the minimum requirements for the performance tiers, as described in more detail below. This will ensure that available funding is spent wisely on technologies that are future proof and will be able to keep pace with increasing consumer demands for higher speeds and lower latency. Moreover, it will also ensure that rural America has access to reasonably comparable broadband services as are available in urban areas, consistent with Section 254 of the Communications Act.

Second, the minimum geographic size for a bid should be the census block. This will promote

¹³ *Id.* at ¶21.

¹⁴ *Id.*

competition among a wider variety of bidders, including utilities, and provide a more level playing field for smaller entities to bid against larger entities for funding to provide broadband to unserved areas. Instead of being forced to overbid for larger census tracts or counties, which may not conform to their service territories, entities will be able to target their bids to the specific census blocks of the areas that they are proposing to serve. To be sure, entities should have the option of strategically bidding for a group of census blocks, but they should not be required to do so by the Commission. This will result in fewer areas remaining unserved, fixing one of the few problems with CAFII, where there were many unserved areas that went unfunded because bidders could not afford to meet the reserve price on an entire census block group. Moreover, the auction software should be technically capable of allowing for entities to bid for specific census blocks.

Third, the Commission should refrain from combining the high-cost and extremely high-cost areas in Phase I of the auction. UTC is concerned that much of the available funding may go to extremely high cost areas, if Phase I combines bids for both high-cost and extremely high-cost areas, thus depriving Americans in high-cost areas from necessary funding to provide access to broadband services that are cost-effective and sustainable, as well as robust, reliable and secure. This was another issue that resulted from CAFII, and the Commission should avoid repeating the same mistake in the RDOF auction. Instead, funding for extremely high-cost areas should be deferred until Phase II of the auction, and as mentioned above, the Commission should reassess the budget after Phase I to ensure that there is sufficient available funding for Phase II.

Fourth, the Commission should establish enforcement mechanisms that incent winning bidders to meet their performance requirements, as well as to comply with the long-form requirements to demonstrate that they are technically, financially and otherwise qualified to be awarded funding. This would help to discourage speculative bidding by entities who are unable to provide the services that they promised to provide when they submitted their bids. Moreover, this will help ensure that consumers in unserved areas receive the quality of services that they need at affordable prices. Too many Americans have been relegated to substandard broadband services for too long; the RDOF represents an opportunity

to change that. In addition, the Commission has a responsibility to manage the RDOF and to enforce the rules so that available funding is put to effective use. For all these reasons, UTC supports strong enforcement mechanisms to ensure that winning bidders comply with the long-form requirements and meet their performance requirements.

V. Deployment Obligations

In the *NPRM*, the Commission proposes to adopt Public Interest Obligations with similar technology-neutral standards for broadband services supported by the Rural Digital Opportunity Fund.¹⁵ Specifically, the Commission proposes to establish a Baseline performance tier of 25/3 Mbps with 150 gigabytes monthly usage allowance (or a monthly usage allowance that reflects the average usage of a majority of fixed broadband customers, whichever is higher). It also proposes an Above Baseline performance tier of 100/20 Mbps with 2 terabytes of monthly usage; and a Gigabit performance tier of 1 Gbps/500 Mbps with a 2 terabyte monthly usage allowance. It also proposes low latency performance requirements (meaning 95% or more of all peak period measurements of network round trip latency are at or below 100 milliseconds) and high-latency performance requirements (meaning 95% or more of all peak period measurements of network round trip latency are at or below 750 milliseconds and a demonstration of a score of four or higher using the Mean Opinion Score with respect to voice performance).¹⁶ Importantly, the Commission proposes not to include a Minimum performance tier of 10/1 Mbps.¹⁷ Moreover, the Commission proposes weighting factors for each of these speed performance tiers as well as for latency, which are different from the weighting factors in CAFII but which still maintain a maximum point spread of 90 points between the highest and lowest possible

¹⁵ *Id.* at ¶23.

¹⁶*Id.*

¹⁷ *Id.* at ¶24.

weighting.¹⁸

UTC supports the Commission's proposal to adopt performance tiers and use weighting factors to compare different bids from different providers using different technologies, but UTC recommends that the Commission adjust the proposed service tiers and the weighting factors to more fairly balance the comparison between bids and to promote the deployment of broadband networks that ensure that available funds are invested wisely into future-proof technologies that will be able to meet increasing consumer expectations cost effectively and provide unserved areas with robust, reliable and affordable broadband services. Specifically, UTC recommends that the Commission increase the Baseline performance tier to 100/20 Mbps and the Above Baseline performance tier to 250/50 Mbps. In addition, UTC recommends that the weighting factors be adjusted so that there is 120 point spread between the highest and lowest weighting.¹⁹ In addition, UTC suggests that the Commission also include a weighting factor in favor of projects that propose symmetrical speeds.²⁰ In combination, these modifications to the performance tiers and the weighting factors are necessary to prevent bids for projects with marginal broadband services from winning a significant amount of the available funding, which was one of the unfortunate results of CAFII. Moreover, it will promote the deployment of broadband networks to enable a variety of important applications (not just Internet access), such as voice, telehealth and smart grid, which will provide significant public interest benefits, but which would not be supported using 25/3 Mbps or high latency services. In this regard, UTC also recommends that the Commission consider increasing the minimum tiers after a certain period of time in order to ensure that broadband continues to be provided at reasonably comparable quality and cost to the broadband services that are available in urban

¹⁸ *Id.* at ¶25.

¹⁹ Specifically, UTC suggests that the Commission increases the weights so the Baseline service tier would be weighted at 75 points; Above Baseline would be weighted 35 points; and Gigabit would be weighted zero points. In addition, UTC suggests weighting high latency at 45 points and low latency at zero points. Alternatively, UTC supports modifying the weighting to increase the proposed 90-point spread between the best and least performing tiers to something higher—e.g., 95% or more. *See NPRM* at ¶25.

²⁰ Specifically, UTC suggests that the Commission subtract 10 points from the weighting for projects that propose symmetrical speeds. This weighting factor could be applied after the clearing round.

areas. Moreover, UTC supports the Commission's proposal not to include a Minimum performance tier, which required 10/1 Mbps broadband in the CAF Phase II auction. UTC agrees with the Commission that the RDOF should seek to provide broadband speeds that are faster than the 25/3 Mbps speeds that were part of CAFII. Moreover, this proposal is more consistent with the Commission's preference for higher speeds, higher usage allowances, and low latency.

UTC also supports the Commission's proposal to adopt the same service milestones for the Rural Digital Opportunity Fund that the Commission adopted for the CAF Phase II auction. In that regard, UTC supports determining compliance on a state-level basis so that a support recipient would be in compliance with a service milestone if it offers service meeting the relevant performance requirements to the required number of locations across all of the awarded areas included in its winning bids in a state. UTC also supports the Commission's proposal to adopt the same flexibility with an accompanying reduction in support that the Commission adopted for the CAF Phase II auction, such that a winning bidder may decide to offer service to at least 95%, but less than 100%, of the number of funded locations at the end of the support term -- but will be required to refund support based on the number of funded locations left unserved in that state.

Similarly, UTC supports with slight modifications the Commission's proposal to require winning bidders to comply with reporting requirements and obtain Eligible Telecommunications Carrier (ETC) status, which are the same requirements for the Rural Opportunity Digital Fund that the Commission adopted for the CAF Phase II auction. While UTC generally supports these requirements, it believes that the Commission should adopt more granular reporting requirements to ensure that winning bidders are not engaging in discriminatory practices that deprive certain areas of the services that they deserve and that the providers promised to deliver to all unserved locations, not just some locations in certain areas. In that regard, UTC believes that additional performance requirements, such as percentage of subscribership levels, may serve to incent appropriate provider behavior and gauge whether consumers are satisfied with the quality and price of the broadband service in their area. However, UTC believes that 70 percent subscribership levels are too high, and if the Commission does adopt such additional

performance requirements, it would be more appropriate to set the subscribership level at 40 percent, particularly in areas where there are already incumbents providing 10/1 Mbps. In addition, the Commission should carefully consider how it measures subscribership, particularly with regard to the definition of locations. UTC suggests that the Commission broadly define locations to include non-traditional subscribers (in addition to homes and buildings).²¹ Finally, UTC supports the Commission's proposal to condition support on meeting these performance requirements, so that the Commission would withhold an amount of support equal to however many percentage points the recipient missed its subscribership milestone by.²² UTC also supports the Commission's proposal to provide a period to cure non-compliance by winning bidders.²³

VI. Areas Eligible for the Phase I and Phase II Auctions

In the *NPRM*, the Commission proposes to target Rural Digital Opportunity Fund support to areas that lack access to both fixed voice and 25/3 Mbps broadband services in two stages.²⁴ Specifically, the Commission proposes to target census blocks that are wholly unserved with broadband at speeds of 25/3 Mbps in Phase I of the auction. For Phase II, the Commission proposes to target census blocks that it later determines are only partially served through the Digital Opportunity Data Collection, as well as census blocks unawarded in the Phase I auction. In addition, the Commission proposes to make several areas initially eligible for Phase I of the Rural Digital Opportunity Fund auction. Specifically, the Commission proposes to include 1) the census blocks for which price cap carriers currently receive CAF Phase II model-based support; 2) any census blocks that were eligible for, but did not receive, winning

²¹ For example, UTC suggests that the Commission consider including "locations" such as billboards that may require broadband connections to display messaging. In that regard, UTC notes that the Commission is currently considering this issue as part of its Further Notice regarding the Digital Opportunity Data Collection proceeding. *See Establishing the Digital Opportunity Data Collection*, Report and Order and Second Further Notice of Proposed Rulemaking, WC Docket No. 19-195 (Aug. 6, 2019).

²² *Id.* at ¶36.

²³ *Id.* at ¶37.

²⁴ *Id.* at ¶45.

bids in the CAF Phase II auction; 3) any census blocks where a CAF Phase II auction-winning bidder has defaulted; 4) the census blocks excluded from the offers of model-based support and the CAF Phase II auction because they were served with voice and broadband of at least 10/1 Mbps; 5) census blocks served by both price-cap carriers and rate-of-return carriers to the extent that census block is in the price cap carrier's territory; 6) any census blocks that are currently unserved outside of price-cap carriers where there is no certified high-cost ETC providing service, such as the Hawaiian Homelands, and any other populated areas unserved by either a rate-of-return or price cap carrier; and 7) any census blocks identified by rate-of-return carriers as ones where they do not expect to extend broadband (as the Commission did with the CAF Phase II auction).²⁵

Further the Commission proposes to exclude those census blocks where a terrestrial provider offers voice and 25/3 Mbps broadband service. In that regard, the Commission proposes to use the most recent publicly available FCC Form 477 data to identify these areas. The Commission also proposes to exclude census blocks where a winning bidder in the CAF Phase II auction is obligated to deploy broadband service. The Commission proposes 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. As part of the Commission's challenge process, the Commission would provide parties with an opportunity to identify areas that have subsequently become served, and it would provide a final list of eligible areas based on the most recent publicly available FCC Form 477 data. Importantly, the Commission proposes to treat price-cap carriers differently from other providers, such that the Commission would include in the Rural Digital Opportunity Fund Phase I auction census blocks in which the price-cap carrier receiving model-based support is the only terrestrial provider reporting the deployment of 25/3 Mbps broadband service in that

²⁵ *Id.* at ¶46.

block, but has not deployed such service to all locations in the block.²⁶

UTC supports the Commission's proposals for Phase I of the auction, including and especially its proposal to target areas that are wholly unserved with 25/3 Mbps and to include areas in which the price-cap carrier receiving model support is the only terrestrial provider of 25/3 Mbps but has not deployed such service to all locations in the block. UTC believes that those areas need access to broadband services with speeds exceeding 25/3 Mbps and that the Commission is correct to treat price-cap carriers differently and include locations in areas where they have not deployed 25/3 Mbps service to all locations. UTC agrees with the views expressed by Chairman Pai that it does not make sense to keep those areas unserved any longer.²⁷ The time is now to make funding available and get broadband out to areas that lack 25/3 Mbps broadband service.

That said, UTC agrees with the Commission's proposal to exclude areas that are where a winning bidder in CAFII is obligated to deploy 25/3 Mbps service, or where federal funding is being made available through other agency programs to support the deployment of 25/3 Mbps. The Commission should, however, provide a challenge process by which some of these areas that are excluded may be included if it is shown that the winning bidder should be disqualified from receiving CAFII or where the funding recipient has otherwise failed to provide 25/3 Mbps consistent with its performance requirements.

Finally, and importantly, UTC agrees with the Commission's proposal to use the FCC Form 477 data to determine areas that are eligible for funding. In that regard, UTC underscores that it has commented throughout the Commission's proceedings that the current broadband maps are inaccurate and overstate the degree to which broadband is available. UTC has also consistently argued that the Commission should treat areas as unserved if only a single location or handful of locations within a census block are currently receiving qualifying broadband service. UTC reiterates its concerns about the accuracy of the Commission's broadband maps and the underlying FCC Form 477 data, and it supports

²⁶ *NPRM* at ¶¶47-49.

²⁷ Statement of Chairman Pai, *Rural Digital Opportunity Fund*, WC Docket No. 19-126; *Connect America Fund*, WC Docket No. 10-90 at 1.

the Commission's proposal to provide a challenge process that would open up census blocks that are not actually served with 25/3 Mbps either in whole or in part. UTC reiterates from its previously filed comments that consumers in unserved areas should not be forced to wait any longer for broadband because of bad data and false claims by broadband providers. Utilities are uniquely positioned to assist the Commission in debunking bad data and false claims about the availability of broadband service, and UTC is pleased to assist the Commission with the challenge process.

UTC also supports the Commission's proposal to include some census blocks where the CAF suggests that the costs of deployment are below the high-cost threshold but deployment has nonetheless not yet occurred. UTC believes that the Commission should make those areas eligible to receive funding to help promote broadband access. In that regard, UTC supports the Commission's suggested approach to include all such census blocks that are not part of an urbanized area (with a population equal to or greater than 50,000) or an urban cluster. This approach would provide greater certainty and require less administrative resources than the alternative approach to include all wholly-unserved census blocks with a particular cost benchmark below \$52.50, such as \$45 or \$40. Finally, it would be more objective and equitable than setting an arbitrary floor of \$45 or \$40 as the baseline for determining the eligibility of these areas to receive broadband funding. UTC believes this approach would better serve the Commission's goal of bringing high-speed broadband service to those without such service in rural America.

VII. Reserve Prices

In the *NPRM*, the Commission proposes to use the CAM to determine the reserve prices and number of locations for each area eligible for support in the auction.²⁸ Specifically, and consistent with the CAF Phase II auction, the Commission proposes using the CAM to establish the area-specific reserve prices based on the annual cost per location, less a benchmark to account for end-user revenue, for high-cost and extremely high-cost areas. In addition, the Commission is proposing that for those census blocks

²⁸ *NPRM* at ¶56.

that are split between a price cap carrier and rate-of-return carrier in Phase I of the auction, it would use the CAM to set the reserve price for the eligible price cap portion of the respective block. Finally, the Commission proposes to set a per-location per-month cap for the reserve prices of census blocks with average costs that exceed the extremely high-cost threshold. Specifically, the Commission proposes to set a reserve price equal to the difference between the high-cost threshold of \$52.50 (\$39.98 in Tribal areas) and the CAM-estimated cost of deployment, up to a \$200 cap (\$212.52 in Tribal areas).

UTC supports the Commission's proposals for setting the reserve price based upon the CAM and establishing a cap on the per-location per month reserve prices of census blocks that exceed the extremely high-cost threshold. UTC agrees that this approach should ensure efficient use of available funds, while providing additional funding to serve locations that exceed the extremely high cost threshold.

UTC also favors prioritizing support to certain eligible areas where broadband is significantly lacking. Specifically, UTC supports prioritizing areas that entirely lack 10/1 Mbps or better fixed service, either at the census block or census block group level. Moreover, UTC supports setting a reserve price for such areas that is higher than that based strictly on the model. UTC suggests that increasing the reserve price by 10% would give bidders a sufficiently greater incentive to bid for support for those areas. However, UTC does not support prioritizing areas that entirely lack 4G LTE mobile wireless broadband because it would deplete funding that could be made available for fixed broadband services. As UTC has commented previously, mobile wireless is not a substitute for fixed broadband services, and as such the Commission need not subsidize the deployment of wireless services.

VIII. Tribal Bidding Credit.

UTC supports providing a Tribal bidding credit for rural Tribal areas, and it recommends that the Commission adopt a 25% bidding credit, consistent with the Commission's approach for Rural Broadband Experiments. Several utilities who provided Rural Broadband Experiments were able to provide broadband to Tribal areas because of the bidding credit. Accordingly, UTC supports adopting the same Tribal bidding credit for rural Tribal areas.

IX. Application Process

In the *NPRM*, the Commission proposes to adopt generally the same two-step application process that it adopted for the CAF Phase II auction.²⁹ Specifically, the Commission proposes to require bidders to submit a short-form application with their basic information in order to become eligible to participate in the auction, and then to require winning bidders to submit a long-form application to provide additional details regarding their legal, technical and financial qualifications, including their ETC status.

The Commission proposes that the short-form application apply to all applicants in order to provide information that will establish their identity, including disclosing parties with ownership interests and any agreements the applicants may have relating to the support to be sought through the Rural Digital Opportunity Fund auction competitive bidding process.³⁰ Specifically, the Commission proposes to apply the existing competitive bidding rules for ownership, including among other things, the real parties in interest, as well as any parties in agreements – including joint bidding arrangements – relating to the participation of the applicant in the competitive bidding. In addition, the Commission proposes to require RDOF applicants to certify that they are technically and financially capable of meeting the applicable public interest obligations using certain proposed standards and certification criteria. Finally, the Commission proposes that all applicants indicate the performance tier and latency for the bids that they plan to make and describe the technology or technologies that will be used to provide service for each bid.

UTC supports these proposals, including allowing an applicant to use different technologies within a state and use hybrid networks to meet its public-interest obligations. In that regard, UTC also supports the Commission’s proposal to require – consistent with the CAF Phase II auction – that the applicant indicate the spectrum band(s) and total amount of uplink and downlink bandwidth (in megahertz) that it has access to for the last mile for each performance tier and latency combination it

²⁹ *Id.* at ¶65.

³⁰ *Id.* at ¶¶69-80.

selected in each state.³¹ UTC believes it is necessary and appropriate for the Commission to require the applicant to disclose whether it currently holds licenses for or leases spectrum and to demonstrate that it has the proper authorizations, if applicable, and access to operate on the spectrum it intends to use. More importantly, UTC agrees with the Commission that applicants should be required to show that the spectrum resources they have will be sufficient to cover peak network usage and meet the minimum performance requirements to serve all of the fixed locations in eligible areas. Finally, UTC agrees with the Commission that the applicant should be required to certify that it will retain its access to the spectrum for at least 10 years from the date of the funding authorization.³²

UTC also supports the Commission's proposal to provide applicants with the option of either demonstrating their operational history and financial qualifications by 1) certifying in its short-form application that it (or its parent company if it is a wholly-owned subsidiary) has provided voice, broadband, and/or electric distribution or transmission services for at least two years prior to the short-form application filing deadline;³³ or 2) if an applicant does not have at least two years of operational experience, submitting their (or their parent company's) financial statements that were audited by an independent, certified public accountant from the three prior fiscal years, including the balance sheets, income statement, and cash-flow statements, along with a qualified opinion letter. Finally, the Commission is proposing applicants that meet these requirements to also provide their (or their parent company's) financial statements from the prior fiscal year if they are audited in the normal course of

³¹ See *Id.* at ¶73 (proposing to require an applicant to indicate the spectrum band(s) and total amount of uplink and downlink bandwidth (in megahertz) that it has access to for the last mile for each performance tier and latency combination it selected in each state.”).

³² *Id.*

³³ The Commission is also proposing requiring applicants who are broadband service providers to demonstrate that they have filed FCC Form 477s as required during the relevant time period, or (in the case of electric service providers) to submit qualified operating or financial reports that it or its parent company (if it is a wholly-owned subsidiary) filed with the relevant financial institution to demonstrate its two years of operational history along with a certification that the submission is a true and accurate copy of the forms that were submitted to the relevant financial institution. *Id.* at ¶76.

business.³⁴ By providing this flexibility, the Commission should encourage participation from non-traditional providers such as electric utilities, as well as new entrants to the broadband market.

Likewise, UTC supports the Commission's proposal that each winning bidder submit a long-form application, which Commission staff will review to determine whether the winning bidder meets the eligibility requirements for receiving Rural Digital Opportunity Fund support and has the financial and technical qualifications to meet the obligations associated with such support.³⁵ Moreover, UTC supports the Commission's proposal to penalize winning bidders that are not authorized to receive RDOF support because the bidder fails to file or prosecute its long-form application or its long-form application is dismissed or denied. Specifically, UTC supports the Commission's proposal to impose the same forfeiture rules on defaulting winning bidders that the Commission adopted for the CAF Phase II auction long-form applicants. UTC believes that these enforcement mechanisms are necessary to ensure that applicants and winning bidders demonstrate their qualifications and comply with their performance requirements, so that available funding is put to good use.

Finally, UTC supports the Commission's proposal to adopt for the RDOF auction the same letter-of-credit rules that it adopted for the CAF Phase II auction.³⁶ Specifically, UTC supports the Commission's proposal that a Rural Digital Opportunity Fund long-form applicant obtain an irrevocable stand-by letter of credit that must be issued in substantially the same form as set forth in the Commission's Phase II Auction Order model letter of credit and that a long-form applicant submit a bankruptcy opinion letter from outside legal counsel. UTC also supports the Commission's proposal to require that the letter of credit be issued by a bank that meets the same CAF Phase II auction bank eligibility requirements. UTC agrees that the letter of credit should continue to be valued at a minimum

³⁴ These financial statements would include the balance sheets, income statements, and cash flow statements, that were audited by an independent certified public accountant, along with the audit opinion. Such applicants would also be required to submit a letter of interest from a bank meeting the Commission's eligibility requirements stating that the bank would provide a letter of credit to the applicant if the applicant becomes a winning bidder and is awarded support of a certain dollar magnitude.

³⁵ *Id.* at ¶82.

³⁶ *Id.* at ¶84.

of the total amount of money that has been distributed each year, plus the amount of money that is going to be provided in the next year. Finally, UTC supports the Commission's proposal to adopt the same phase-down schedule that was used in the CAF Phase II auction, allowing the value of the letter of credit to decrease over time as a support recipient satisfies its minimum coverage and service requirements.³⁷

UTC reiterates its support for the Commission's proposal to adopt the same procedures for bidders to obtain Eligible Telecommunications Carrier designations as it used for CAFII.³⁸ Specifically, UTC agrees with allowing bidders to obtain ETC status after the conclusion of the auction, rather than requiring ETC status as a precondition for participation in the auction. In that regard, UTC agrees with the Commission that it should allow winning bidders to obtain ETC status within 180 days of the release of the public notice announcing winning bidders.

³⁷ *Id.* at ¶86.

³⁸ *Id.* at ¶90.

WHEREFORE, the premises considered, UTC respectfully requests that the Commission adopt rules for the Rural Digital Opportunity Fund that are consistent with these comments.

Respectfully,

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