

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

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

COMMENTS OF SACRED WIND COMMUNICATIONS, INC.

Sacred Wind Communications, Inc. (“Sacred Wind”) files these comments in response to the *Notice of Proposed Rulemaking* adopted by the Federal Communications Commission (“FCC” or “Commission”) in the above captioned proceedings proposing a framework and rules for the Rural Digital Opportunity Fund (“RDOF”) to bring high-speed broadband and voice services to rural areas that remain as-yet wholly or partially unserved with minimum broadband speeds of 25/3 Mbps.¹

I. INTRODUCTION

Sacred Wind is the only non-Tribal incumbent local exchange carrier formed exclusively to serve Tribal customers, who are generally low-income and reside in extremely rural, remote areas. Approximately one-fourth of Sacred Wind’s customers reside in small HUD or Navajo Housing Authority developments and neighborhoods surrounding a Navajo Chapter House. Based on Sacred Wind’s experience deploying telephone and broadband services to thousands of unserved homes on Navajo Reservation and near-Reservation lands, as well as its recent participation in the Connect America Fund Phase II reverse auction (Auction 903), Sacred Wind

¹ *Rural Digital Opportunity Fund, Connect America Fund*, WC Docket No. 19-126, WC Docket No. 10-90, Notice of Proposed Rulemaking (rel. Aug. 2, 2019) (“*NPRM*”).

provides a number of recommendations on the Commission's proposed RDOF rules and framework.

II. DISCUSSION

A. Adopting Census Block Groups as The Minimum Geographic Bidding Unit Would Provide Balance Between Incentivizing More Robust Deployment and Auction Manageability.

The Commission proposes and seeks comment on whether census block groups containing one or more eligible census blocks is an appropriate minimum geographic unit for bidding for the RDOF, particularly given that the RDOF auctions will be much larger than Auction 903.² Sacred Wind urges the Commission to adopt census block groups as the minimum geographic bidding unit rather than larger areas such as census tracts or counties in order to provide greater incentives for auction participants to commit to more robust deployments, particularly with fixed wireless or fiber-to-the-premises, while also maintaining auction manageability. Though adopting larger geographic area bidding units like census tracts or counties would result in fewer bidding units, it also would discourage and possibly preclude auction participation by small and rural providers by creating vast and costly study areas that may be more suitable for buildout using multiple network technologies (e.g., FTTP plus satellite) versus a single network technology. As was the case with Auction 903, census block groups generally would provide a reasonable balance between sufficiently small bidding areas that permit small and rural providers such as Sacred Wind to bid on targeted areas with their network technology of choice, yet manageably large enough to avoid overly complicating the auction.

If, however, the Commission does adopt census tracts or counties or some minimum geographic bidding unit that is bigger than census block groups, then Sacred Wind urges the

² *NPRM* at ¶ 21.

Commission to permit RDOF bidders to satisfy performance obligations through partnerships that have *mixed* network technology capabilities. Tribal areas, such as those served by Sacred Wind, are characterized by sparsely populated, expansive geographic territories, difficult topography and vexing siting processes. Delivering high-speed broadband using fixed wireless or fiber may be achievable for certain swaths of a census tract or county, but the most remote parts of that area may be best served by satellite or another network technology at lower speeds and higher latency rates. The Commission should reward and not penalize providers in instances where, for example, a provider cannot serve 95% or more supported locations³ at a committed speed (e.g., 100 Mbps) using a *single* network technology (e.g., fixed wireless) but instead can serve 80% of supported locations with 100 Mbps broadband and the other 20% of supported locations with 25 Mbps broadband using satellite services from the provider's RDOF satellite provider partner.

B. Better Gatekeeping Measures Such as Stricter Party Eligibility Requirements and an Abbreviated Short-Form Application May Increase Bid Activity and Reduce Defaults.

As an initial matter, Sacred Wind recommends providing a glide path to providers that have had at least two years of experience of providing broadband to end users prior to the date of the short-form application. In particular, the Commission should provide an abbreviated short-form application process for CAF Phase II auction winners that have been authorized support as those entities have been vetted recently by the Commission and have proven themselves

³ Pursuant to the current proposed RDOF rules at Sections 54.316(a)(4) and 54.802(c) and consistent with Auction 903 and Section 54.310(c) of the Commission's rules, recipients must deploy to 95-100% of supported locations and report such service offerings at requisite speeds in order to be compliant. *See NPRM* at Appendix A and 47 C.F.R. § 54.310(c).

experienced in both the provision of broadband services and in successfully completing the Commission auction process for high-cost support.

Conversely, applicants lacking this background should be subject to stricter eligibility criteria and should be required to submit technical data as part of their short-form application to demonstrate their capability to provide voice and broadband services to areas of interest where deployments may be challenging. For instance, the distribution or transmission of electricity should not alone serve as an eligibility factor because the expertise and experience required to operate and maintain an electric network does not readily transfer to a broadband system. Additionally, parties that have defaulted on their entire awards in prior universal service programs should be restricted from participating in RDOF.

C. RDOF Supported Buildouts Should Require Reasonable Access to Utility Poles.

Consistent with provisions adopted for Phase I of the Mobility Fund and Tribal Mobility Fund (Auctions 901 and 902, respectively),⁴ the Commission should include a public interest obligation requiring RDOF recipients to provide reasonable access to utility poles to other providers to minimize anticompetitive behavior. In Auctions 901 and 902, the Commission established a collocation obligation rule⁵ whereby recipients were required to allow for reasonable collocation by competing service providers on newly constructed towers that the recipient owns or manages in the area for which it receives support during the five-year period following support authorization. This rule further prohibited recipients from entering into facilities access arrangements that would restrict third parties from allowing collocation on such

⁴ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17667, para. 1 (2011) (“*USF/ICC Transformation Order*”), *aff’d sub nom. In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

⁵ 47 C.F.R. § 54.1006(d).

facilities.⁶ Moreover, the Commission specified that Mobility Fund recipients had a duty to construct towers, where reasonable, in a manner that will accommodate collocations; and to engage in reasonable negotiations on a not unreasonably discriminatory basis with any party seeking to collocate equipment at such a site to offer service that would meet Mobility Fund technological requirements (i.e., a competing service).⁷ In adopting this requirement for the Mobility Fund, the Commission concluded that such collocation requirements were in the public interest because they would help increase the benefits of the expanded coverage made possible by the Mobility Fund by facilitating service from other providers using different technologies.⁸

The Commission should adopt a similar provision for the RDOF for utility pole access as it did for tower collocation for Mobility Fund, though the RDOF provision should not be limited only to new construction. The tower infrastructure used for Mobility Fund deployments ran the gamut in terms of age and types of towers and the extent to which they could accommodate collocation. Indeed, the Commission specifically articulated that Mobility Fund recipients were duty-bound where reasonable to construct towers in a manner that will accommodate collocations. For RDOF, utility poles are far more amenable and accessible for a wide range of supported services that would be deployed. Just as the Commission found that collocation requirements were in the public interest for the Mobility Fund, there is a similar public interest here in that collocations would help increase the benefits of the expanded coverage made possible by the technology-neutral RDOF by facilitating service from other providers using different technologies, and recipients that reap the benefits of RDOF funds to support build-out, should not be permitted to discriminate against other providers in their access to the recipient's

⁶ *Id.*

⁷ *USF/ICC Transformation Order* at ¶376.

⁸ *Id.*

poles necessary for those providers' provision of service. This is particular so in the case of RDOF recipients who may not be subject to Section 224 of the Act, such as electric cooperatives and municipal entities.⁹

D. The RDOF Performance Tiers and Bidding Weights Should Reflect Practical Deployment Considerations.

As proposed, the RDOF bidding weights oversimplify the extent to which high-speed broadband can be delivered to extremely rural and remote areas such as those served by Sacred Wind. Typically, FTTP for gigabit broadband services can only be deployed readily and affordably in areas with higher population density and where rights-of-way issues are not complicated by federally and Tribally-managed land use practices. Given these circumstances, Sacred Wind believes that a 25-point spread between Gigabit and Above Baseline is unnecessarily high. The relative unaffordability of fiber in remote and sparsely populated areas, particularly in federally and Tribally managed lands, makes a fixed wireless network a likely solution. Moreover, the cost for a fixed wireless provider to offer Above Baseline service at 100/20 Mbps to all census block group locations, would be considerably higher than the provision of Baseline service 25/3 Mbps to the same area, though fixed wireless networks are capable of providing broadband services well in excess of 25/3 Mbps and should be able to submit bids at an appropriately higher performance tier.

Accordingly, the Commission should include an additional performance tier at 50/6 Mbps with a bidding weight factor of 30, and the other bidding weights should be redistributed as follows:

⁹ 47 U.S.C. § 224(a).

Performance Tier	Speed	Monthly Usage Allowance	Weights
Minimum	≥ 25/3 Mbps	≥ 150 GB or U.S. median, whichever is higher	60
Baseline	≥ 50/6 Mbps	≥ 150 GB or U.S. median, whichever is higher	30
Above Baseline	≥ 100/20 Mbps	≥ 2 TB or U.S. median, whichever is higher	15
Gigabit	≥ 1 Gbps/500 Mbps	≥ 2 TB or U.S. median, whichever is higher	0

This additional tier would help distinguish fixed wireless network solutions from satellite networks, which Sacred Wind finds are not comparable with respect to affordability or service quality due to slower speeds and higher latency.¹⁰ Under the Commission’s current RDOF performance tiers and bidding weights, Sacred Wind—which strives to provide equal opportunities to Tribal, rural and remote customers—is concerned that customers in Tribal and remote areas will be relegated to satellite service, given the lower deployment costs of satellite networks. The Commission has previously recognized that characteristics of Tribal lands can increase the cost of entry and reduce the profitability of providing service, “including the lack of basic infrastructure in many tribal communities,” and that “promoting the development of telecommunications infrastructure on Tribal lands is consistent with the Commission’s unique trust relationship with Tribes.”¹¹ Sacred Wind urges the Commission to adopt these revised performance tiers and bid weights to further promote the development of terrestrial-based, robust telecommunications infrastructure in Tribal, rural and remote areas.

¹⁰ Sacred Wind also supports a framework that rewards latency levels that are even lower than what is currently proposed (e.g., minus 5 points from tier weight for latency ≤ 25 ms).

¹¹ *USF/ICC Transformation Order* at ¶¶482-483.

E. The Commission Should Adopt Additional Performance Targets for Extremely Remote Areas, But Not Subscription Targets.

For extremely rural census blocks, for instance, where household density is 2-4 homes per square mile, Sacred Wind would support a 90% service obligation at the required speed and a separate allowance to reach the remaining 10% of supported locations at speeds of 10/1 Mbps or less. It is these areas where infrastructure costs are greatest on a per-subscriber basis, and a lower bandwidth allowance for a fraction of subscribers would incentivize more bid activity and service deployments in these areas. Though the Commission does not propose including 10/1 Mbps speeds as part of the RDOF, such speeds were included in Auction 903 and would provide critical, minimal service to residents in the most remote, low density areas, who have thus far remained unserved.

Under no circumstances would adopting subscription targets for the RDOF would be in the public interest as they would work against Tribal, rural and remote areas where not merely the absence of broadband availability, but the absence of *affordable* broadband, historically has been a major contributing factor to lower take rates. A January 2019 Congressional Research Service (CRS) report notes that broadband adoption rates of 25/3 Mbps or greater for fixed terrestrial services was 34.5% for non-urban Tribal areas versus 59.8% for the greater United States¹² and that overall Internet use at home is lower for American Indians at 51.5% compared for the United States as a whole at 71.9%.¹³ Promoting Internet usage on non-urban tribal lands

¹² Tribal Broadband: Status of Deployment and Federal Funding Programs (Updated January 9, 2019), Congressional Research Service Report R44416, at p. 5, Table 4 (*citing* 2018 FCC Consolidated Marketplace Report, p. 144).

¹³ *Id.* at Table 5 (*citing* Digital Nation Data Explorer, National Telecommunications and Information Administration, November 2017 data).

requires more, and specially tailored, community-based outreach than is required on non-Tribal lands.

F. The Tribal Broadband Factor and Tribal Bidding Credit Are Necessary Stopgaps, But the Commission Should Address Location Disparities.

Sacred Wind supports the adoption of a Tribal Broadband Factor for the RDOF to account for the unique challenges of deploying broadband to rural Tribal communities. The proposed inclusion of Tribal lands census blocks meeting a \$39.38 per month benchmark (i.e., a 25% decrease compared with the \$52.50 non-Tribal funding benchmark) will help to bring more known Tribal locations into the RDOF fold for essential voice and broadband funding.

Similarly, Sacred Wind supports the adoption of a Tribal bidding credit to incentivize RDOF auction participants to bid on and serve Tribal census blocks, particularly for the higher performance tiers. There is precedent for bidding credits in the context of spectrum auctions, Rural Broadband Experiments, and the Tribal Mobility Fund for serving Tribal lands and/or being Tribally-owned or controlled. Incentivizing parties to bring telecommunications infrastructure to long unserved or underserved Tribal areas is squarely in the public interest. Under the current proposed performance tiers and bidding weights, Sacred Wind supports a 25% bidding credit. If the Commission revises its performance tiers and bidding weights to those suggested by Sacred Wind, then a 15% Tribal bidding credit would be appropriate because of the built-in incentives to deliver higher speeds to supported areas.

In addition to these measures, Sacred Wind strongly urges the Commission to closely examine its underlying location data to investigate the extent to which Tribal residences may have been significantly overlooked and omitted from the Commission's inaccurate data. Following a thorough review of its own Alternate Connect America Model II offer, Sacred Wind discovered a significant shortfall of funded locations relative to actual locations within its

eligible census blocks.¹⁴ Such locations are largely Navajo residential communities that are unserved or underserved and not located within the study area of an unsubsidized competitor. These locations include Navajo homesites (leased Navajo Nation land that can host three residential locations), Bureau of Indian Affairs managed parcels (where multiple family members can reside across many acres of land), residential hogans (octagonal or round Navajo residential structures), or trailers. These locations can typically be accessible only by dirt roads and therefore lack street addresses, while others may be unrecognizable as a traditional residence outside of particular Tribal communities. Investigating and correcting this major data discrepancy in RDOF and all other universal service mechanisms may be the most effective measure in bridging the digital divide for Tribal communities.

III. CONCLUSION

Based on the foregoing, Sacred Wind encourages the Commission to adopt these RDOF recommendations to effectively and accurately incentivize high-speed broadband and voice service deployments to the Tribal, rural and remote areas that lack these critical services.

Respectfully submitted,

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Dated: September 20, 2019

¹⁴ *Connect America Fund et al.*, WC Docket No. 10-90 et al., [Petition for Waiver of Sacred Communications, Inc.](#) (July 17, 2019).