

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 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 ALTEVA - NJ

Alteva, Inc. – NJ (“Alteva” or the “Company”) hereby responds to the invitation of the Federal Communications Commission (“FCC” or “Commission”) to comment on its August 2, 2019 Notice of Proposed Rulemaking, wherein the FCC establishes the Rural Digital Opportunity Fund (“RDOF”).¹ The RDOF is a reverse auction designed to support the deployment of high-speed broadband networks in rural areas served by price cap carriers. The NPRM seeks comment on the proposed framework for the program. However, in one section of the NPRM, the Commission asks whether Phase I of the RDOF auction should include rate-of-return (“RoR”) areas receiving Legacy Universal Service Fund (“USF”) support that appear to be entirely or almost entirely overlapped by an unsubsidized competitor, based solely upon Form 477 broadband availability data.²

As demonstrated herein, including areas served by Legacy RoR carriers in an auction designed for areas served by price cap carriers is contrary to Congress’ goals for USF and is adverse to the public interest. Further, given that the decision to use reverse auctions in RoR areas was made only recently with no indication as to when proposed rules would be released, it

¹ See Notice of Proposed Rulemaking on the Rural Digital Opportunity Fund and Connect America Fund, WC Docket No. 19-126 and 10-90, para. 47 (rel. Aug. 2, 2019) (“NPRM”).

² *Id.* at para. 47.

is premature for the FCC to include these areas in any auction at this time. Alteva-NJ urges the Commission to use extreme care as it considers how to craft rules to implement reverse auctions in RoR areas and not move forward with implementation until awardees in the CAF Phase II auction have demonstrated that they have been successful in reaching their buildout obligations.

I. RoR Areas Should Not Be Included in a Reverse Auction Designed for Price Cap Carriers

Alteva strongly opposes including Legacy RoR areas that are entirely or almost entirely overlapped by an unsubsidized competitor in the RDOF Phase I auction. In the December 2018 USF Reform Order in which the FCC adopted its new 100% overlap rule, the Commission observed that in a study area that is entirely, or almost entirely, overlapped by unsubsidized competitors, “there may still be some locations within census blocks that do not have access to broadband, i.e., although a block is partially served by an unsubsidized provider not all of the locations in that block are served.”³ As explained in the NPRM, RDOF Phase I will utilize Form 477 data at the census block level, not at the sub-census block level envisioned in the December 2018 USF Reform Order. Accordingly, RDOF Phase I is not the appropriate context in which to include RoR areas.

More importantly, the Legacy RoR USF framework has been crafted to provide support to the entire RoR study area, including mandating five-year buildout requirements.⁴ Legacy RoR carriers’ Eligible Telecommunications Carrier (“ETC”) obligations to continue serving the entire study area have multiple ramifications, including the continued enforcement of state carrier-of-last-resort (“COLR”) obligations and impacts on Legacy RoR carriers’ decisions

³ See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, Further Notice of Proposed Rulemaking, and order on Reconsideration, FCC 18-176, 32-35, at para. 143 (Dec. 13, 2018) (“December 2018 USF Reform Order”).

⁴ *Id.* at paras. 95-96.

regarding where to invest and deploy broadband. This is in stark contrast to price cap carriers' CAF Phase II funding and discrete ETC obligations at the census block level that were designed with reverse auctions in mind.⁵ Accordingly, if the FCC were to include Legacy RoR carriers in the RDOF, the FCC would be imposing an entirely different USF framework on these carriers which would have catastrophic consequences. For example, the RoR carrier that has been serving the study area in its entirety, through its study area-wide ETC and COLR obligations, will either only receive support for a few discrete census blocks or no support at all. For some RoR carriers, this could result in curtailing of broadband deployment and maintenance of their network or even default on construction loans. This would not only hurt the RoR carriers that have invested significantly over *decades* to serve these communities, but also, more importantly, the communities themselves would experience the loss of new and improved broadband services.

II. It is Premature for the FCC to Include RoR Areas in Reverse Auctions

As demonstrated above, reverse auctions, such as the one the FCC proposes in the RDOF, are designed for price cap areas where no provider offers 25/3 Mbps. Reverse auctions are not for smaller, high-cost Legacy RoR areas where a RoR carrier made a long-term commitment to focus their time, energy, and investments to ensure that those residents and businesses are served with the required 25/3 Mbps deployment. Before the FCC requires any

⁵ See *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order and/or FNPRM*); *aff'd sub nom.*, *In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014). (“2011 USF/ICC Transformation Order”); see also *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, 29 FCC Rcd 15644, 15663-71, para. 51 (2014) (footnotes omitted) & 47 C.F.R. § 54.201(d)(3) (granting limited forbearance to price cap carriers that accept model support from ETC requirements to offer voice and broadband services to large portions of their study areas).

Legacy RoR areas to be included in a reverse auction, the Commission must give careful, thoughtful consideration as to how the rules should be crafted and the auction implemented.

For example, if the FCC intends for RoR areas to be included in an auction at the sub-census block level as indicated in the December 2018 USF Reform Order, then Form 477 data which is at the census block level cannot be used. Instead, the FCC should postpone any consideration of a reverse auction in RoR areas until at least after the Digital Opportunities Data Collection with its polygon and crowdsourcing approach has been fully implemented in the RDOF Phase II to determine how best to determine unserved areas at the sub-census block level. Only after that approach has been tested in the price cap area context should the FCC consider moving forward with a reverse auction in RoR areas.

Additionally, given the complexities associated with replacing the current Legacy USF study area-wide mechanism with reverse auctions in RoR areas that are entirely or almost entirely overlapped by unsubsidized competitors, the Commission should first make sure that the reverse auction framework is successful. RoR carriers play a vital role in the communities they serve and have invested significantly to serve them. Because of these and other unique factors, the Commission typically first ensures that new USF mechanisms are successful in the price cap arena before developing rules to implement similar mechanisms in RoR areas. For example, before developing the rules to allow RoR carriers to adopt model support (the “Alternative Connect America Model” or “A-CAM”), the FCC first developed and implemented the Connect America Model or “CAM.” The Commission should follow suit in this context and first ensure that its first reverse auction – the CAF Phase II auction in which the FCC is still authorizing winners – has been successfully implemented. This will allow the FCC enough time to see the

impact of a reverse auction framework and whether it truly is an efficient and effective way to distribute support.

For example, as recently as this week, the FCC for the first time authorized a satellite provider to be an ETC. Alteva-NJ urges the Commission to ensure that new entrants such as satellite providers are able to successfully fulfill all of their CAF Phase II auction buildout requirements before the Commission crafts rules which would determine whether such providers with high latency should be considered a substitute for Legacy RoR ETCs that have been providing reliable voice and high speed broadband to rural communities for decades. Too much is at risk if Legacy RoR areas are included in a reverse auction prior to the end of the CAF Phase II buildout obligation timeframe, given that RoR carriers are serving high-cost, vulnerable communities.

III. CONCLUSION

For all the reasons described herein, Alteva-NJ urges the FCC to not include Legacy RoR areas in the RDOF reverse auction and to carefully craft rules for reverse auctions in RoR areas only after the CAF Phase II buildout obligation deadline has passed and the Commission has been able to better assess where the process has been successful and where it needs to be improved.

Respectfully Submitted,

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/s/ Robert F. Hagan

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