

**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 CENTURYLINK**

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**COMMENTS OF CENTURYLINK<sup>1</sup>**

**I. INTRODUCTION AND SUMMARY**

CenturyLink provides these comments in response to the Commission's Notice of Proposed Rulemaking (NPRM) in the above-referenced matter.<sup>2</sup> CenturyLink is a global technology company and serves as a price cap incumbent local exchange carrier in many areas of the United States. CenturyLink has a long history of participating in federal universal service high-cost programs to provide voice and more recently broadband service in high-cost areas throughout the country. Most recently, in 2015 CenturyLink accepted Connect America Fund Phase II (CAF II) model support in thirty-three states and under the CAF II program is deploying broadband service at speeds of 10/1 Mbps or greater to high-cost rural areas throughout the country. As of year-end 2018, under the CAF II program CenturyLink had made qualifying broadband service available to approximately 750,000 locations in CAF II areas. Now, as the Commission is looking to wind down the CAF II model-support program and transition to the Rural Digital Opportunity Fund (RDOF) to extend higher-speed broadband in these areas,

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<sup>1</sup> This filing is made on behalf of CenturyLink, Inc's. subsidiary entities that are incumbent local exchange carriers, including its incumbent local exchange carrier Qwest Corporation d/b/a CenturyLink QC.

<sup>2</sup> *Rural Digital Opportunity Fund; Connect America Fund*, WC Docket Nos. 19-126, 10-90, Notice of Proposed Rulemaking, FCC 19-77 (rel. Aug. 2, 2019); 84 Fed. Reg. 43543 (Aug. 21, 2019) (RDOF NPRM or NPRM).

CenturyLink is interested in continuing its service commitment to these high-cost areas.

CenturyLink files these comments to highlight its views on a few key issues raised in the NPRM.

Specifically, to best accomplish a smooth transition to the RDOF program the Commission should continue with CAF II model support and legacy transition support at least through the end of calendar year 2021. This would allow the Commission to have time to prepare and run the auction and work through the post-auction support award process while ensuring that consumers continue to have access to broadband service at reasonable rates in these areas. And, if the Commission were to authorize support for all or most winning bidders to start January 1, 2022, that would allow an easier transition from CAF II support and obligations to RDOF support and obligations. It would also enable all involved to better budget and plan for the transition.

A two-phased approach to the RDOF program is reasonable under the circumstances, but it is critical that the Commission proceed with broadband mapping efforts that will illuminate locations that remain without higher-speed broadband even within areas where higher-speeds are only available to some locations. Continuing to move forward with deployment of higher-speed broadband service in high-cost areas is important to bring the many benefits of that service to rural areas. And where we already know those services are lacking, all deliberate speed is appropriate. But, more attention to detail is needed to discern more discreet areas where broadband service is not available within larger “served” areas. Creating a nationwide broadband location fabric and incorporating service reporting will be necessary to identify all locations that will need Phase II RDOF support.

A broadband location fabric should also improve the reporting and compliance processes of the RDOF and other universal service high-cost programs. Unlike the current CAF reporting

process, RDOF support recipients should not be held accountable for the accuracy of third-party geocoders when reporting deployed locations. Service providers like CenturyLink are in the business of providing telecommunication networks, not geocoding locations, and they must rely on commercial geocoding to provide the latitude and longitude of locations to which they have deployed service. Commercial geocoding that does not place a location at a structure or places it on an incorrect structure should not render deployed locations ineligible for being counted. We encourage the Commission to create a common, agreed-upon base map of serviceable locations – the broadband location fabric – which carriers can use to plan and report the locations that they serve.

The Commission should revisit its proposed letter of credit requirements. As proposed the requirements are excessive and will result in an unnecessary waste of limited universal service support that could be better directed at additional broadband deployment to unserved locations in high-cost areas. The letter of credit valuation is well-beyond what is necessary to protect the RDOF program from risk of participant non-performance, particularly after the first network deployment milestones have been met. As a first step toward reducing the exorbitant cost of the letters of credit the Commission should release funds from the letters of credit when the associated network deployment has been verified. Even this will only partly address the unnecessary costs of the letters of credit and the Commission should consider additional measures to reduce the cost of protecting against the risk of non-performance in the program.

The Commission should not adopt a subscriber penetration performance requirement, and especially not at seventy percent. The purpose of high-cost universal service support is to make supported services available in high-cost areas at reasonable rates. Providers receiving this support must inform consumers that these services are available and at what prices, but it is

beyond the scope of the support (and, frankly, the ability of the providers) to require that a certain percentage of consumers actually purchase the available services. Further, providers such as CenturyLink have every incentive to get consumers to purchase broadband service in supported areas where they have deployed network infrastructure to enable that service. Also, implementing a subscriber penetration performance requirement for the RDOF program with financial non-compliance repercussions seems fraught with challenges, and CenturyLink's experience with CAF II subscriber penetration cautions against participating in any program that would have subscribership milestones. The Commission can take more direct steps to ensure that support recipients market their supported service to customers in supported areas; subscribership milestones are not necessary.

With respect to deployment obligations, the Commission should continue to afford flexibility in the number of locations that must be deployed, but it should not require support to be returned if in fact there are fewer eligible locations in an area than were originally noted. The number of locations in any given area are likely to change over a ten-year period. Auction participants should be able to bid based on the number of locations identified at the time of auction without having to worry about losing support in an area if fewer locations are available for deployment.

Reasonable and timely access to poles remains critical to rural broadband and 5G deployment, yet municipal and cooperative electric utilities often fail to provide access to their poles in a reasonable and timely manner. As part of their public interest obligations as RDOF recipients, all RDOF auction winners, including municipal and cooperative utilities, should be required to provide just, reasonable, and non-discriminatory access to their poles on rates, terms,

and conditions consistent with the Commission's pole attachment rules. At a minimum, winning bidders should be required to provide such access in areas where they receive RDOF support.

**II. TO BEST ACCOMPLISH A SMOOTH TRANSITION TO THE RDOF PROGRAM THE COMMISSION SHOULD CONTINUE WITH CAF II MODEL SUPPORT AND LEGACY TRANSITION SUPPORT AT LEAST THROUGH CALENDAR YEAR 2021.**

The RDOF program will be the next phase of federal universal service support in price cap carrier service areas identified as high-cost. Unlike prior support programs for these areas, the support will be made available through a reverse auction, with the lowest bidder winning support for ten years to deploy higher-speed broadband service and offer that broadband service and voice service to customers in the supported area. But, to get to the RDOF program, the Commission must successfully transition from the current federal high-cost support mechanisms in price cap high-cost areas: CAF II model support and legacy transition support.

**A. Continued Support Would Ensure Continuity of Broadband Service at Reasonable Rates.**

As the Commission prepares for the RDOF program including the pre-auction process, running the auction, and the post-auction process including authorizing support for winning bidders, for several reasons it would be a logical transition for price cap carriers to continue to receive CAF II model support at least through the end of 2021. First, obligations to provide broadband service in these areas ends with the termination of support. The Commission's rules are clear that for the CAF, the program obligations are tied to the receipt of support.<sup>3</sup> To ensure continuity of broadband service in these areas at reasonable rates as the Commission transitions

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<sup>3</sup> For example, the CAF II public interest obligations of 47 C.F.R. § 54.309 apply to recipients of CAF II support. Similarly, the reporting obligations of 47 C.F.R. § 54.313 and associated obligations included therein such as tribal outreach are required of "recipients of high-cost support."



to a new support mechanism for these areas the Commission should provide the optional seventh year of funding as it previously anticipated could be warranted.<sup>4</sup>

**B. A Full-Year of Support Provides Clarity for Annual Budgeting and Operations Planning.**

Second, the Commission should authorize a full calendar year of support to allow the current support recipients to plan and budget for a full additional year of offering and providing CAF II service and meeting CAF II obligations. Knowing that support would be provided for a full year would afford current support recipients greater certainty about the service obligations that would be required and the support that would be available for the full year. This approach would be preferable to one where support can be lost and corresponding service obligations terminated at any time in any area subject to, at best, a month's notice and, at worst, a few days. Such a piecemeal approach to transitioning support and service obligations is hard on everyone involved – current service providers, future service providers, FCC staff who have to issue multiple orders awarding bids, and USAC staff who have to track and implement different schedules of support and do verifications of different compliance milestones.

**C. A Full Year of Support Would Minimize the Administrative Burdens of the Transition to the RDOF Program.**

Third, assuming the Commission is successful in having the auction in the last quarter of 2020, a full-calendar year of support for existing CAF II recipients would afford the Commission the time needed to complete review of the long-form applications and the other post-auction

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<sup>4</sup> In all circumstances where another provider begins receiving RDOF support, as an ETC their obligation to offer voice service throughout their ETC territory should commence with the receipt of their RDOF support.

procedures prior to authorizing funding for winning bidders.<sup>5</sup> In fact, if the Commission were to plan to authorize funding for all winning bidders to begin on January 1, 2022, that could afford an approach that would align all RDOF recipients with a simple, clean calendar-year basis for receipt of support and corresponding obligations. It would also align well with the existing structure of CAF II support and obligations which are provided and required on a calendar-year basis. Using the full year of 2021 to transition from CAF II to RDOF would be an approach that should provide sufficient notice to all of the termination and commencement of high-cost support and corresponding high-cost support recipient obligations. It would be an approach that would minimize the administrative burden on the Commission, USAC, and RDOF support recipients by aligning service milestones, service milestone certifications and location reporting deadlines for all RDOF support recipients.

The transition from CAF II model support in areas where there is no winning bidder after the RDOF auction would need to be treated differently. In those areas, the Commission should permit the existing provider to choose whether to continue meeting high-cost support recipient obligations with appropriate support or to decline the support and terminate the associated obligations.

Should the Commission adopt a clean start of support for all RDOF winning bidders on January 1, 2022, the Commission could easily apply the same approach to the legacy transition support (disaggregated frozen support) that is being received by carriers in some areas. Thus, (1) in areas deemed ineligible for RDOF support a carrier would cease receiving legacy transition

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<sup>5</sup> For comparison, the CAF II auction concluded at the end of August 2018; the first winners were authorized to receive support in May 2019; and a significant share of support has yet to be authorized.

support as of February 1, 2022; (2) in areas where the incumbent carrier becomes the RDOF recipient the carrier will cease receiving legacy transition support in those areas and begin receiving RDOF support on February 1, 2022; (3) in areas where another provider becomes the RDOF recipient the carrier will cease receiving legacy transition support in those areas on February 1, 2022; and (4) in areas where no provider becomes an RDOF recipient, the incumbent carrier would continue to receive legacy transition support.<sup>6</sup>

### **III. TO FULLY ACCOMPLISH THE GOAL OF GETTING HIGHER-SPEED BROADBAND TO UNSERVED LOCATIONS THE COMMISSION MUST COMPLETE A BROADBAND LOCATION MAPPING FABRIC.**

The Commission has proposed to implement RDOF in two phases. In the first phase the Commission plans to focus on supporting higher-speed broadband deployment to those high-cost census blocks that are “wholly unserved” meaning that no provider is offering both voice service and at least 25/3 Mbps terrestrial fixed broadband service.<sup>7</sup> To the extent that these “wholly unserved” areas can be identified fairly quickly using existing tools, it makes sense to move forward with supporting higher-speed broadband deployment in these areas as quickly as is reasonable.

At the same time, to fully accomplish the goal of getting higher-speed broadband to all unserved locations in high-cost areas, the Commission will need better tools to identify unserved locations in larger “served” areas. The USTelecom mapping pilot project has demonstrated that

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<sup>6</sup> The reason for the February 1, 2022 date is in recognition of the fact that support payments are made by USAC one month in arrears, such that support for January is paid in February. Thus, CAF II providers would receive their December payment in January and RDOF recipients would receive their January payment in February. This approach would also apply to the CAF II model support.

<sup>7</sup> NPRM, ¶ 16.

there are at least hundreds of thousands of unserved locations in what we currently label as “served” census blocks.<sup>8</sup> Mapping efforts remain critical to successful deployment to unserved locations that are not currently known. Phase II of RDOF will need mapping data to identify and target support to these locations. Once a location fabric is complete and there is a better picture of the landscape of unserved locations, additional funding may be necessary for RDOF Phase II.

Additionally, the location fabric should enable improved reporting of deployed locations which will also be important to the success of the RDOF program. RDOF recipients should not be held accountable for the accuracy of third-party geocoders in order to report deployed locations. Service providers like CenturyLink are not in the business of geocoding the locations to which they deploy service. We typically identify our service locations with street addresses, location description in reference to nearby landmarks or intersections, or, if necessary, directional distance from a central office or other feeder location in the network. In reporting hundreds of thousands of locations in the HUBB for its CAF II deployments, CenturyLink has had to rely on the accuracy of commercial geocoders, which is generally recognized as poorer in rural areas.<sup>9</sup> Where commercial geocoders do not place the latitude and longitude of a location on a structure or place it on the wrong structure, CenturyLink does not have the resources to identify the error or improve upon it. If the third-party geospatial data provider, who is in the

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<sup>8</sup> See Ex parte letter from B. Lynn Follansbee, USTelecom, to Marlene H. Dortch, FCC, WC Docket Nos. 19-126, *et al.* (Aug. 22, 2019), at 1; Ex parte letter from B. Lynn Follansbee, USTelecom, to Marlene H. Dortch, FCC, WC Docket Nos. 19-126, *et al.* (Aug. 29, 2019), at 1.

<sup>9</sup> See, e.g., Ex parte letter from Mary L. Henze, AT&T, to Marlene H. Dortch, FCC, WC Docket No. 10-90 (Sep. 4, 2018), at 1 (noting that standard geolocating software and techniques are inconsistent and change often in rural areas); Geolocation Methods, Universal Service Administrative Company, <https://www.usac.org/res/documents/hc/pdf/tools/HUBBGeolocationMethods.pdf>. (recognizing that automated geocoding may not produce accurate results in rural areas).

business of geocoding, cannot provide an accurate geocode, CenturyLink will not do better and should not have to. In turn, commercial geocoding errors should not render reported deployed locations ineligible, especially when locations are clearly within an eligible area (census block). Instead, the Commission should create a map of agreed-upon serviceable locations that carriers can then use to report the locations that they serve. The broadband location fabric would be the correct tool to accomplish a more accurate picture of broadband deployment in rural areas throughout the country.

#### **IV. THE COMMISSION SHOULD REVISE ITS APPROACH TO THE LETTER OF CREDIT VALUATION FOR RDOF.**

The Letter of Credit (LC) requirements the Commission propose to adopt for the RDOF are almost incomprehensibly excessive. The increasing sums proposed over the six-year deployment period are disproportionate to the actual risk of default, and the proposal does not account for the substantial cost that would have to be borne by RDOF participants. Taken together, the Commission's LC proposal is likely to divert over 5% of the total RDOF ten-year budget away from rural broadband investment and toward paying banks without providing any more protection against risk than could be accomplished with a small fraction of that expenditure. If the proposed LC rules are adopted without substantial modification, they will be a massive waste of limited USF funds rather than serving as "... 'an effective means for accomplishing [the Commission's] role as stewards of the public's funds[.]'"<sup>10</sup>

The Commission has a long and successful track record of supporting rural, high-cost telecommunications and broadband deployment over several decades. Billions of dollars each year have been disbursed and used for investment and operations, thereby bringing and

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<sup>10</sup> RDOF NPRM, ¶ 84 (citation omitted).

maintaining service to millions of household and business locations that would not otherwise have service. All of this has been accomplished with oversight and very few instances of fraud, waste, or abuse. Instances of providers defaulting on their obligations have been rare. Looking ahead, the Commission proposes substantial oversight mechanisms for the RDOF, including regular reporting and enforcement measures, which will further reduce the risk of default and any need to recover funds. Moreover, once the supported networks have been deployed, they will remain in place even in the case of bankruptcy and can be transferred to another provider so that the supported services remain intact.

The Letter of Credit has been used since ancient times,<sup>11</sup> most commonly in connection with international trade, which is a relatively high-risk activity compared with broadband deployment. It also poses difficult challenges to insuring against various risks such as accident, loss, and failure to perform because of the mix of legal jurisdictions. In the contemporary broadband market, however, providers such as CenturyLink make use of LCs and other, less burdensome instruments such as Performance or Surety Bonds, most commonly to insure against possible damage to property or failure to perform during some dedicated network construction. The dollar amount of these LCs is comparatively small, however, so that even a large company such as CenturyLink, which invests billions of dollars each year in network construction will only have LCs for a couple of hundred million dollars at most.

The Commission wrote in the NPRM that its purpose for requiring LCs is to ensure that it can recover past funding amounts should recipients not meet their obligations.<sup>12</sup> In the records

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<sup>11</sup> *Documentary Letters of Credit*, 22 COLUMBIA LAW REVIEW, No. 4, pp. 297-331 (Apr. 1922), <https://www.jstor.org/stable/1111302>.

<sup>12</sup> RDOF NPRM, ¶ 84.

for the *USF-ICC Transformation Order*, *Rural Broadband Experiments Order*, and the *CAF II Auction Order*, commenters suggested other options for protecting against the risk of default including existing accountability measures, performance or construction bonds, field inspections, denials of certification, escrow, or tiered obligations based on history with high-cost support.<sup>13</sup> In each case the Commission rejected all suggestions in favor of requiring LCs, but it only considered the benefits of each instrument and it never considered the relative costs. CenturyLink submits that the Commission must consider the costs as well as the benefits, and that simply maximizing the protection against risk at any expense is inconsistent with its role as “stewards of the public’s funds.”

The Commission has stated that the benefits of LCs include allowing “the Commission to immediately reclaim support[,]” and “minimizing the possibility that the support becomes property of a recipient’s bankruptcy estate for an extended period of time[.]”<sup>14</sup> The very characteristics that the Commission has cited as attractive also make LCs relatively costly for the banks that issue them and the providers that pay for them. It is hard to estimate the precise fees that would be required because the NPRM proposes LCs that are likely to be many times greater than anything participants currently use. Nonetheless, it seems likely based on CenturyLink’s experience and market research that RDOF participants are likely to pay annual fees of at least 2%, and perhaps as much as 4+%. Those costs necessarily will reduce the amount of funding

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<sup>13</sup> *USF/ICC Transformation Order*, 26 FCC Rcd 17663, 17810-12 ¶¶ 444-51 (2011); *Rural Broadband Experiments Order*, 29 FCC Rcd 8769, 8788-89 ¶¶ 56-57 (2014); *CAF II Auction Order*, 31 FCC Rcd 5949, 5989-90 ¶¶ 119-21, 6045-49 (Appx. B) (2016).

<sup>14</sup> *CAF II Auction Order*, 31 FCC Rcd at 5990 ¶ 120.

that can be used for the intended purpose of supporting broadband in uneconomic, high-cost areas.

The LCs proposed in the NPRM would require RDOF recipients each year to secure all funds received in prior years plus the funds that are to be disbursed in the coming year. This compounding of funding received in the past would be modestly reduced by 10% after verification of the 60% milestone, and by 40% after verification of the 80% milestone. In practice, USAC verification of deployment milestones has been completed about one year after the milestone. If one assumes that the average fee paid to obtain these LCs is on the lower end of the 2%-4% range, then the cumulative LCs for all RDOF recipients would amount to over \$1 billion as shown in the following table.

<b>NPRM Letter of Credit Fees</b>				
		RDOF Budget = \$16,000,000,000	Average LC Fee = 2.50%	
Year	Buildout	LC Amount	LC Fees	Percent of Fund
1		\$1,600,000,000	\$40,000,000	2.50%
2		\$3,200,000,000	\$80,000,000	5.00%
3	40%	\$4,800,000,000	\$120,000,000	7.50%
4	60%	\$6,400,000,000	\$160,000,000	10.00%
5	80%	\$8,000,000,000	\$200,000,000	12.50%
6	100%	\$8,800,000,000	\$220,000,000	13.75%
7		\$7,360,000,000	\$184,000,000	11.50%
8				
9				
10				
	Total	\$40,160,000,000	\$1,004,000,000	6.28%

Over the course of the buildout period, the proposed LC requirements likely would secure over 250% of the total RDOF budget for ten years (if \$1.6 billion is disbursed each year, the cumulative amount of the proposed LCs will be over \$40 billion). Even with a conservative



assumption that average LC fees will be 2.5% annually, the industry as a whole would spend over \$1 billion in LC fees (which is over 6% of the total RDOF budget), and over 10% of the annual RDOF budget in funding years four through seven would go toward these massive LCs. The escalation in those middle years is particularly inappropriate as the supported networks will be over 50% deployed and the risk of default is low.

Based on the history of success in high-cost USF programs and the sunk-cost nature of broadband investment, it is inconceivable that the Commission will ever have the need to recover \$1 billion in RDOF payments. In fact, it is highly unlikely that even one-tenth of that amount will actually be at risk. In which case, the NPRM's LC proposal will be a gigantic waste of money and the public interest would be far better served to have no LCs at all. Not only will the Commission have caused far more to be spent than recovered (enriching banks), but those funds could have been used to bring high-speed broadband to thousands of additional unserved rural household and business locations.

Large LCs are also likely to have a negative impact on RDOF participants' access to capital which, in turn, may further reduce broadband deployment. When asking about this, the Commission notes in the NPRM that companies routinely use LCs and have access to multiple financing vehicles and opportunities.<sup>15</sup> While this is true, it misses a key point—each company's access to financing is a function of the risk that the company will not be able to meet its obligations. When the Commission first concluded that LCs are unlikely to impact access to capital, it was doing so in the context of the Mobility Fund, Phase I.<sup>16</sup> That was a relatively

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<sup>15</sup> RDOF NPRM, ¶ 89.

<sup>16</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17811 ¶ 446 (noting in the context of MF-I that “companies who have existing lenders regularly use [letters of credit] in the normal course of operating their businesses and are able to maintain multiple forms of financing, thus, we give

small program disbursing a total of \$300 million in three installments to many providers. The proposed RDOF LCs, however, are certain to be many times larger—the annual total of LCs for all providers will be 20-40 times larger in years 3-7 than the entire Mobility Fund. Such large LCs should be expected to negatively impact access to financing, at least on the margin, both by creating a substantial, potential future obligation (however unlikely) and by negatively impacting cash flow through the cost of paying for the LC.

The NPRM proposal is correct that providers should be released from the LC obligation once full deployment is verified. Conceptually, at no point should the LC cover more than the funding that would be at risk if the recipient were to cease deploying the supported network. As a first step toward reducing the cost of LCs, the Commission could apply the same logic across all years during which providers are deploying the supported networks. Under this approach, the Commission would release funds from the LC when the associated network deployment has been verified. Once the network has been deployed and is being used to provide service in the supported area, the Commission's interest in being able to reclaim RDOF funding will be largely, if not completely, extinguished. The disbursed funds will have been used for their intended purpose, and any subsequent default by the RDOF recipient should not give the Commission a legal basis for reclaiming those funds.<sup>17</sup>

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little credence to the suggestion that this requirement could fatally impair a company's ability to obtain private or public market funding.”)

<sup>17</sup> The Commission stated in the *USF/ICC Transformation Order* that it would have the right, and even the responsibility, to reclaim USF funds that had been used properly in the case of subsequent default by the recipient. Neither that order nor subsequent orders adopting similar LC requirements, provide a reasoned explanation for this claimed authority, which seems at least facially inconsistent with legal and equitable principles.

Releasing funds secured by an LC once the associated network has been deployed would also be consistent with how LCs are used generally. In practice, it would mean that the LC obligation for RDOF should be limited after the first verification to just two years' annual funding until the final deployment milestone is verified. In addition, providers should have the opportunity (but not requirement) to report and have verified a 20% deployment milestone after years one or two, after which the first two funding years would be removed from the LC. These changes would substantially reduce the amount of RDOF funding used to insure against the risk of default, as shown in the following table.

<b>Modified Letter of Credit Fees</b>				
		RDOF Budget = \$16,000,000,000	Average LC Fee = 2.50%	
Year	Buildout	LC Amount	LC Fees	Percent of Fund
1		\$1,600,000,000	\$40,000,000	2.50%
2	20%	\$3,200,000,000	\$80,000,000	5.00%
3	40%	\$4,800,000,000	\$120,000,000	7.50%
4	60%	\$3,200,000,000	\$80,000,000	5.00%
5	80%	\$3,200,000,000	\$80,000,000	5.00%
6	100%	\$3,200,000,000	\$80,000,000	5.00%
7		\$3,200,000,000	\$80,000,000	5.00%
8				
9				
10				
	Total	\$22,400,000,000	\$560,000,000	3.50%

Even with this proposed modification, the LCs will still cost far more than necessary. The Commission should consider additional measures to further reduce the cost of protecting against the risk of default.

**V. THE COMMISSION SHOULD NOT ADOPT A SUBSCRIBER PENETRATION PERFORMANCE REQUIREMENT.**

The Commission seeks comment on whether it should adopt a subscribership milestone for RDOF support recipients and offers an example of seventy percent of each deployment milestone.<sup>18</sup> The Commission should not do so.

**A. An Adoption Performance Requirement Should Not Be Part of the RDOF Program.**

The purpose of high-cost universal service support is to make telecommunication services and advanced communication services available to Americans in high-cost areas at reasonable rates. Given this it is reasonable for the Commission to require providers to ensure that they offer the services to consumers. This is reflected in the ETC obligation to advertise the services and rates supported by federal universal service support mechanisms in the supported areas.<sup>19</sup> But, requiring providers to also ensure that a sufficiently high percentage of consumers take the service is not an appropriate measure of whether participants have made the requisite service available to Americans in high-cost areas at reasonable rates. A subscriber penetration performance requirement is not an appropriate component of the RDOF program, and the Commission should not adopt one.

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<sup>18</sup> RDOF NPRM, ¶ 41. The Commission notes that seventy percent was the subscribership level assumed by the Connect America Model, but does not evaluate whether the rationale for that subscribership level in the CAM would support application of a seventy percent target for a program performance requirement.

<sup>19</sup> See 47 U.S.C. § 214(e)(1)(b) (ETCs must advertise the availability of services supported by federal universal service support mechanisms and their rates throughout the areas for which the support is received using media of general distribution.)

**B. Wireline Providers Will Want Consumers to Purchase Their Services in RDOF Areas.**

Providers like CenturyLink have every incentive to sell their service to consumers in program areas where they have deployed the network facilities required to provide the requisite broadband service in high-cost areas. Under the CAF II program, CenturyLink is counting on consumers in these areas taking their broadband service to achieve the anticipated business results that were estimated when CenturyLink made the decision to accept CAF II funding to deploy at least 10/1 Mbps broadband service in CAF II areas. But failure to achieve a certain subscriber penetration rate in RDOF areas just as in CAF II should not result in a loss of funding. If anything, that adds insult to injury for a company like CenturyLink to the extent that missing a subscribership milestone would also mean missing an estimated business result. Not only would the company be out the anticipated revenue, but it would also be out RDOF funding. Additionally, CenturyLink would have invested significant capital to enable locations under the program and having to return funding that enabled that investment because one or more consumers did not take service in an area would also elevate the risk of participating in the program.

**C. A Subscriber Penetration Requirement for the RDOF Program Will Be Challenging to Implement and Administratively Burdensome.**

As the Commission suggested in its request for comments, clearly defining what subscriber penetration rates are can be challenging. For example, what is the appropriate denominator for the penetration rate? Presumably, it is all RDOF eligible locations to which a provider has made RDOF-qualifying broadband available. And, the numerator most likely is the number of those locations for which the provider has a customer purchasing at least 25/3 Mbps service. Or, the numerator could also include those locations where the customer is purchasing a

broadband service at speeds less than 25/3 Mbps. For what areas is the penetration rate determined? Each area with separately awarded support? What happens if there are only a few locations in an area? Is the penetration rate based on a snapshot date or is it an average rate? How does the penetration rate account for churn? Since penetration rates are fluid and change daily, how do you determine the penetration rate that would be evaluated for compliance with the milestone? It is recognized that adoption rates for newly available service are not fast.<sup>20</sup> How would the penetration rate take that lag into account? How would yet another performance requirement with compliance penalties fit with the compliance penalty framework for missing deployment milestones and or network testing standards? How does a company show an increased subscriber rate to recover withheld funding?

**D. CenturyLink's CAF II Experience Cautions Against Use of a Subscribership Penetration Performance Requirement.**

Further, CenturyLink's experience with CAF II cautions against participating in a program that would have subscribership milestones. For its CAF II enablement CenturyLink assumed a subscriber penetration rate significantly less than seventy percent. Even with pre-deployment, at deployment, and post-deployment marketing efforts that include a variety of marketing materials and approaches, CenturyLink has been challenged to drive high penetration rates in CAF II areas. While there is some indication that speeds of higher than 10/1 Mbps may result in a higher penetration rate, experience suggests that a seventy percent subscriber penetration would rarely, if ever, be attainable in these rural areas. CenturyLink's marketing

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<sup>20</sup> For example, even while the rates at which consumers in the United States are adopting new technology are increasing, it still took tablet computers, a very popular technology, seven years (2010 – 2017) to reach an adoption rate of sixty-four percent.  
<https://www.visualcapitalist.com/rising-speed-technological-adoption/>

efforts already include yard signs, door hangers, flyers, e-mail, postcards, and radio spots. But, with subscriber penetration struggling to meet expectations, CenturyLink continues to work on additional marketing approaches in its CAF II areas. If the RDOF includes a subscriber penetration requirement, especially one based on a seventy percent target, such a requirement could preclude CenturyLink's participation in the program.

**E. Providers Should Market Their Services in RDOF Areas.**

If the Commission's primary concern behind the subscriber penetration performance requirement proposal is that some winning bidders may not have sufficient incentive to market their services in RDOF areas, then the Commission should address that issue directly. The Commission could require that providers describe in their short-form application how they intend to market their services and be prepared to demonstrate how they have marketed their services in RDOF areas upon audit. The Commission should not, however, prescribe specific marketing materials or approaches. Support recipients should remain free to determine how best to market their services to customers in RDOF areas. It is reasonable for the Commission to require that providers market their services to consumers in RDOF areas. This is something over which providers have control and is part of making their service available in RDOF areas. It goes too far, however, for the Commission to require that providers attain customers for a certain percentage of locations to which they have made that service available. This is beyond the control of service providers and should not be a basis for holding that providers have not made broadband service available in high-cost areas. For all these reasons, CenturyLink views that the better course of action is for the Commission not to implement a subscriber penetration performance requirement.

**VI. RDOF SUPPORT RECIPIENTS SHOULD NOT BE AT RISK FOR LOSS OF AUTHORIZED SUPPORT DUE TO INCORRECT LOCATION COUNTS WITHIN CENSUS BLOCKS.**

CenturyLink agrees with the Commission that it must continue to afford flexibility with respect to the number of locations to which an auction support recipient must deploy qualifying broadband service to meet their deployment obligations. At the same time, CenturyLink views that additional flexibility with respect to deployed locations is warranted for RDOF. Once the auction is complete and the support is authorized, there should be no subsequent reduction in support if there are fewer locations in a census block than were originally identified by the Commission.

The Commission has proposed that if by the final service milestone a support recipient is offering service to at least 95%, but less than 100%, of the number of funded locations in a state that the recipient may refund support based on the number of locations left unserved without a penalty for non-compliance with the final service milestone. This is the same approach that has been used for the CAF II statewide model support and the CAF II auction support.<sup>21</sup> The Commission has also proposed that it afford flexibility such that if a support recipient sufficiently demonstrates that there are not sufficient locations across the census blocks for which a recipient has won support in a state that its support obligation and support may be reduced on a pro rata basis.<sup>22</sup>

CenturyLink views that this approach is generally correct with the modification that a support recipient should not be required to refund support if the number of locations on which its

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<sup>21</sup> RDOF NPRM, ¶ 29.

<sup>22</sup> RDOF NPRM, ¶ 30.



support is based is not correct. The simple fact is that the number of eligible locations in a census block is unlikely to be correct when it is first determined, and it will most likely change over a ten-year period. Auction participants should be able to determine how best to bid based on the number of locations identified by the FCC in an area without bearing the risk that the information about the number of locations may not be correct.

## **VII. REASONABLE AND TIMELY ACCESS TO POLES REMAINS CRITICAL TO RURAL BROADBAND AND 5G DEPLOYMENT.**

Broadband and 5G deployment in rural areas depends on reasonable and timely access to poles. As the Commission found last year, such access “is essential to the race for 5G because mobile and fixed wireless providers are increasingly deploying innovative small cells on poles and because these wireless services depend on wireline backhaul.”<sup>23</sup> These concerns led the Commission to streamline its pole attachment processes for both wireline and wireless attachers.

These same concerns are relevant here. In crafting auction rules, the Commission must ensure the continuing availability of reasonable and timely pole attachments, by requiring all auction participants to commit to comply with these important public interest obligations with respect to all their pole assets. If an electric utility chooses to compete in wireline telecommunications markets using public funding, it should commit to comply with the same basic rules that apply to its competitors. Both fairness and the public interest require no less. Nevertheless, if the Commission does not mandate this commitment as a condition for bidding, it

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<sup>23</sup> *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment; Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, WT Docket No. 17-79, Third Report and Order and Declaratory Ruling, 33 FCC Rcd 7705, 7706 ¶ 1 (footnote omitted) (2018), *appeals pending sub nom., American Electric Power Service Corp., et al. v. FCC, et al.*, Nos. 19-70490, *et al.* (9<sup>th</sup> Cir., *pet. for rev. filed* Mar. 1, 2019).

should at least require winning bidders to commit to comply with the Commission's pole attachment rules in any geographic area in which they receive RDOF support. Such requirements are essential to ensure that Americans living in those areas have access to 5G, as well as broadband, services.<sup>24</sup>

**A. Municipal and Cooperative Utilities Frequently Fail to Provide Reasonable and Timely Access to Their Poles.**

In areas where an ILEC is the winning bidder, Section 224 guarantees reasonable and timely access to that bidder's poles. But that is not necessarily the case in other areas. Absent Commission action, municipal and cooperative electric utilities participating in the auction will not have to provide such access on their poles, given their exemption from Section 224, except in the infrequent situations in which they are required to do so by state law.

This is a problem. Access to municipal and cooperative utility poles is often much slower and sometimes significantly more costly, if available at all, than obtaining access to poles subject to the Commission's pole attachment rules. This has been a significant impediment to CAF II deployment, as municipal and cooperative utilities are the primary owners of poles in rural areas.<sup>25</sup> CenturyLink has repeatedly encountered long delays in seeking to attach CAF II-funded fiber facilities to municipal and cooperative utilities' poles. In some cases,

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<sup>24</sup> These commitments should apply to the auction participant's affiliates, as well as the auction participant itself. In other words, a municipal or cooperative utility auction participant should not escape these commitments simply because it retains its pole assets in a separate affiliate.

<sup>25</sup> According to the American Public Power Association (APPA), municipal utilities, which it refers to as "public power" utilities, provide electricity to 49 million people in 2,000 communities across the U.S. American Public Power Association website, <https://www.publicpower.org/public-power/stats-and-facts> (last visited Sept. 12, 2019). Cooperative utilities serve approximately 42 million people. National Rural Electric Cooperative Association website, <https://www.electric.coop/our-mission/americas-electric-cooperatives/> (last visited Sept. 12, 2019).

CenturyLink's inability to obtain timely access to these poles has led it to instead bury its fiber facilities, at significant additional cost and delay,<sup>26</sup> thereby depleting funds that otherwise could be used to bring service to additional living units.

For example, last year CenturyLink sought access to poles owned by a cooperative utility in Colorado for a 15-mile fiber build necessary to deliver CAF II-supported broadband. After approving about a quarter of the attachments for the deployment, the cooperative refused to process any additional attachments until CenturyLink addressed demands unrelated to its pole attachment application. After months of unsuccessful attempts to resolve these issues, CenturyLink was forced to scrap its plan to attach to the cooperative's poles and instead bury the fiber facilities through rocky, mountainous terrain at considerable additional expense.

Such coercive tactics would be prohibited by the Commission's rules if they applied to this utility. Indeed, the Commission addressed this issue in a complaint decision just last month.<sup>27</sup> In that case, PPL Electric had refused to process a telecommunications carrier's pole attachment application because of alleged non-payment of monies in dispute and claims of unauthorized attachments. The Commission concluded that PPL's "refusing to act on the pending applications on this basis is a denial of access that violates rule 1.1403(a), since the refusal to act is not based on capacity, safety, reliability, or engineering concerns."<sup>28</sup> It therefore "order[ed] PPL immediately to respond to th[e]se applications" in the manner prescribed by the

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<sup>26</sup> On average, buried deployments typically cost ten times more than aerial deployment.

<sup>27</sup> *MAW Communications, Inc. v. PPL Electric Utils. Corp.*, Memorandum Opinion and Order, EB Docket No. 19-29, File No. EB-19-MD-001, 2019 FCC Lexis 2225 (rel. Aug. 12, 2019).

<sup>28</sup> *Id.* at ¶ 16. Rule 1.1403(a) requires a utility to provide "a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it . . . [except] where there is insufficient capacity or for reasons of safety, reliability and generally applicable engineering purposes." 47 C.F.R. § 1.1403(a).

Commission's rules.<sup>29</sup> Unfortunately, given the Section 224 exemption, CenturyLink has not been able to invoke such regulatory action to address the Colorado cooperative's refusal to process CenturyLink's CAF II-related pole attachment applications.

CenturyLink has run into similar roadblocks with a municipal utility in Washington, in deploying CAF II-supported facilities to 1,000 living units. Like the Colorado cooperative, this municipal utility has conditioned approval of CenturyLink's pole attachment applications on CenturyLink's agreement to other unrelated and longstanding demands, such as claims that CenturyLink is unlawfully attached to certain municipal utility poles. Also like in Colorado, the result has been ongoing delays in offering broadband service to the affected living units. Further complicating this situation, the city inspector in that municipality has become involved in attempting to enforce the municipal utility's claims. Two other municipal utilities in Washington similarly have held hostage CenturyLink's CAF II-related pole attachment applications based on unrelated demands. In one of those cases, CenturyLink ultimately had to bury its fiber facilities to meet its CAF II deployment commitments.

Even when it can successfully obtain access to municipal and cooperative utility poles, CenturyLink sometimes pays rates that are substantially higher than those subject to Commission rules. In addition to crafting a one-sided agreement template for its membership to demand of attaching entities, including CenturyLink, APPA has pushed a rate formula that typically results in rental rates more than triple the Commission's cable rate. Similarly, the rate created by the Tennessee Valley Authority for its associated municipal providers seeks to increase the cost to attaching entities at least four-fold. These inflated charges have a significant impact in rural

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<sup>29</sup> *MAW Communications, Inc. v. PPL Electric Utils. Corp.*, 2019 FCC Lexis 2225 \*2 ¶ 1.

areas, given that service in those areas requires more poles-per-home-passed than in urban and suburban areas. This problem is by no means unique to CenturyLink. In July, NCTA submitted a report by Dr. Michelle Connolly demonstrating that the pole attachment rates charged by municipal and cooperative utilities are more than double those charged by investor-owned utilities, and that this disparity cannot be explained by differences in economic costs.<sup>30</sup> These concerns are only exacerbated in cases such as this “where the municipal or cooperative electric is an actual or potential competitor in the broadband market because it can use its leverage over pole attachment rates to penalize its competitors.”<sup>31</sup>

Yet pole attachment rates tell only part of the story of how municipal and cooperative utilities increase the cost of deployment in their service territories. Electric cooperatives, and municipal utilities sometimes rely on expensive audit and attachment correction programs to rebuild their plant at the cost of attaching entities. For example, a cooperative utility in New Mexico terminated CenturyLink’s joint use agreement and demanded a new pole license agreement. A hallmark of the new contract is an upfront total system audit—substantially at CenturyLink’s cost. One of the apparent intended outcomes of the audit is to require existing and longstanding attachments made at aboveground level heights consistent with prior versions of the National Electrical Safety Code (NESC) to be raised to current, higher NESC requirements. In this rural territory, where many of the attachments run along stretches of empty land, moving the lines to the new height will require the same for all new poles along the route.

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<sup>30</sup> See Letter from Steve Morris, Vice President & Deputy General Counsel, NCTA, to Ms. Marlene H. Dortch, Secretary, FCC, GN Docket No. 17-83, WC Docket No. 17-84, WT Docket No. 17-79 (dated Jul. 22, 2019), attaching report of Dr. Michelle Connolly, *The Economic Impact of Section 224 Exemption of Municipal and Cooperative Poles*.

<sup>31</sup> See *id.*, Letter, at 1-2.

These attachments, and the poles supporting them, have been in place for decades. In the normal course of events, the electric pole owner should replace these poles due to their age and condition. Instead, they appear poised to demand replacement by CenturyLink at a cost of millions of dollars in order to remedy a condition that is not a safety issue, and that is specifically allowed by the grandfathering rules of the NESC. The result would be the cooperative inheriting a windfall of all new poles for tens of miles—at the sole cost of CenturyLink. Nevertheless, in these situations, attachers such as CenturyLink have no recourse to challenge these rates and other terms because municipal and cooperative utilities generally are not regulated at the state or local level.

**B. All Auction Participants Should Be Required to Commit to Just, Reasonable, and Nondiscriminatory Access to Their Poles.**

Given these widespread and egregious practices, the Commission should require all auction participants, including municipal and cooperative electric utilities, to commit to provide just, reasonable, and nondiscriminatory access to their poles on rates, terms, and conditions consistent with the Commission’s pole attachment rules. CenturyLink recognizes that these utilities are exempt from Section 224 requirements. However, that exemption is based on their status as electrical utilities. When they voluntarily provide telecommunications, via public funding, it is reasonable and appropriate for these utilities to commit to the same public interest obligations that apply to their wireline telecommunications competitors.

**C. At a Minimum, Winning Bidders Should Be Required to Commit to Such Access in Areas Where They Receive RDOF Funding.**

At a minimum, all winning bidders should commit to provide access to their poles consistent with the Commission’s pole attachment rules. If a municipal or cooperative utility wins the bid to provide wireline service in a census block, it is essentially stepping into the shoes

and potentially displacing the ILEC. Indeed, the ILEC may seek authority to discontinue service in that area, recognizing the difficulty of competing against a government-funded wireline competitor. In that case, the municipal or cooperative utility may be the only pole owner in that area. And without a requirement for that utility to provide just, reasonable, and nondiscriminatory access, competitors will likely encounter high rates and coercive practices like those CenturyLink has experienced when deploying CAF II facilities. Such unreasonable terms may have a particularly negative effect on 5G deployment, which depends on terrestrial fixed networks,<sup>32</sup> and requires deployment of large numbers of small-cell antennas. In rural areas, those antennas often will likely be attached to poles, given the sparseness of other structures in more rural areas. But that assumes the availability of just, reasonable, and nondiscriminatory access to those poles, which is unlikely to occur without a commitment to comply with the Commission's pole attachment rules.

## **VIII. CONCLUSION**

As the Commission prepares for the next phase of supporting deployment of higher speed fixed broadband services in certain high-cost areas of the country it should build on the successes of the past phases, seek to improve upon aspects of those programs that have missed the mark, and avoid imposing unnecessary requirements that do not advance or that undermine program objectives. As such, CenturyLink encourages the Commission to continue with CAF II model support and legacy transition support through 2021 to best enable a smooth transition to the RDOF program, to complete a broadband mapping location fabric to enable better identification of unserved locations and improve targeting of support for broadband deployment and reporting

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<sup>32</sup> See RDOF NPRM, ¶ 25.

of that deployment, to revisit its approach to the letter of credit valuation to bring that cost more in-line with the non-performance risk for which the letter of credit provides protection, to decline to adopt a subscriber penetration performance requirement, to relieve RDOF recipients from bearing the financial risk of inaccurate location counts within census blocks, and to require all RDOF winners to provide just, reasonable, and non-discriminatory access to their poles on rates, terms and conditions consistent with the Commission's pole attachment rules.

Respectfully submitted,

**CENTURYLINK**

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