

KELLEY DRYE & WARREN LLP

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NEW YORK, NY
LOS ANGELES, CA
HOUSTON, TX
AUSTIN, TX
CHICAGO, IL
PARSIPPANY, NJ
BRUSSELS, BELGIUM

WASHINGTON HARBOUR, SUITE 400
3050 K STREET, NW
WASHINGTON, DC 20007

(202) 342-8400

FACSIMILE
(202) 342-8451
www.kelleydrye.com

AFFILIATE OFFICE
MUMBAI, INDIA

DIRECT LINE: (202) 342-8518
EMAIL: tcohen@kelleydrye.com

November 21, 2019

Via ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: *Ex Parte* Filing of ACA Connects – America’s Communications Association
in WC Docket No. 19-126, Rural Digital Opportunity Fund**

Dear Ms. Dortch:

On November 19, 2019, Ross Lieberman and Brian Hurley of ACA Connects – America’s Communications Association (“ACA Connects”) and Thomas Cohen and J. Bradford Currier of Kelley Drye & Warren LLP (counsel to ACA Connects) (collectively, the “ACA Connects Representatives”) met with the following staff of the Federal Communications Commission (“Commission”) to discuss the Commission’s proposed rulemaking on the Rural Digital Opportunity Fund (“RDOF”)¹: Michael Janson (RBATF); Jeff Prince (OEA), Ryan Palmer (WCB), Kirk Burgee (WCB/RBATF), Lauren Garry (WCB), Katie King (WCB), Ian Forbes (WCB), and Alex Minard (WCB).

The ACA Connects Representatives began the meeting by reiterating their support for the RDOF and urged the Commission to promptly develop and implement the program in the coming year to help close the digital divide. ACA Connects’ membership is made up of nearly 800 small- and medium-size independent operators providing video, broadband, and phone services. These members invest billions annually to upgrade their networks to provide high-speed, affordable broadband services to their customers, primarily in rural areas. Many ACA Connects members participated in the Connect America Fund (“CAF”) Phase II auction. These members, and many others who are located near proposed RDOF-eligible areas, are interested in participating in the RDOF auction. If these operators ultimately choose to bid, such robust RDOF participation by them and similarly-situated service providers will help the Commission

¹ *Rural Digital Opportunity Fund, Connect Am. Fund*, WC Docket Nos. 19-126, 10-90, Notice of Proposed Rulemaking, 34 FCC Rcd 6778 (2019).

Marlene H. Dortch
November 21, 2019
Page Two

to achieve its goal of spurring deployment of high-speed broadband networks that will keep pace with growing consumer demands over the 10-year life of the program.

Last year's CAF Phase II auction clearly demonstrated that the Commission can foster the deployment of higher performing broadband networks to unserved locations far more cost-effectively through competitive bidding than by relying on model-based support. However, based on discussion with members that participated in the auction and those that did not after conducting due diligence, the ACA Connects Representatives submitted that, with the improvements discussed below, the RDOF can build on the CAF Phase II auction's successes while addressing its shortcomings. The record in the RDOF proceeding demonstrates that certain aspects of the CAF Phase II auction process deterred participation, limited competition, and reduced the overall cost-effectiveness of the program. Thus, consistent with prior comments in this proceeding,² the Commission should refine its proposals to maximize auction participation and improve the general structure and implementation of the RDOF as follows:

Bidding by Census Blocks. To begin with, the Commission should establish the census block as the minimum geographic bidding unit for the RDOF auction. The Commission's decision to use census block groups as the minimum geographic bidding unit in the CAF Phase II auction – a decision apparently influenced by the computational limitations of Commission auction software – discouraged participation by ACA Connects members and other smaller providers because it required providers to couple blocks that are economic to serve (with the subsidies eligible to be won at the auction) with those that are uneconomic to serve, in effect forcing an inefficient cross-subsidy. This problem will be exacerbated should the Commission follow through on its proposal and include extremely high-cost census blocks in the RDOF auction, potentially leaving more areas unserved or at least enabling bids that are not cost-effective because of the lack of competition.

By contrast, census block bidding would increase RDOF participation by all providers, allowing them to tailor their bids to cover areas deemed economic to serve, including locations abutting current service areas.³ While there are economic advantages to permitting bidding by

² See Comments of ACA Connects – America's Communications Association on the Notice of Proposed Rulemaking, WC Docket Nos. 19-126, 10-90 (Sep. 20, 2019); Reply Comments of ACA Connects – America's Communications Association on the Notice of Proposed Rulemaking, WC Docket Nos. 19-126, 10-90 (October 21, 2019).

³ The Commission should hold off on lowering the longstanding high-cost threshold until at least RDOF Phase II. By permitting census block bidding, providers may be able to make the business case for deploying to unserved "lower cost" areas currently located in higher cost census block groups. In addition, the Commission should allow recent regulatory and legislative measures designed to reduce broadband deployment costs to take hold and incentivize new buildouts in these areas before considering threshold adjustments. At a minimum, the Commission should obtain additional data from providers to determine why buildouts in these areas have not occurred

Marlene H. Dortch
November 21, 2019
Page Three

census block groups and even larger areas, the Commission could still achieve these benefits of scale by allowing package bids for multiple census blocks during the RDOF auction. With the RDOF auction likely at least a year away, the Commission should not allow any computation limitations of its auction software vendor in running an auction using census blocks as the minimum bidding unit to dictate the minimum bidding unit for the RDOF auction. If necessary, it should utilize a different vendor. By doing so, the RDOF minimum bidding unit can be structured to maximize auction participation by providers of all sizes.

Weighting Methodology. The Commission should adjust the proposed RDOF performance tier bid weighting methodology to make it more technology-neutral to maximize participation by providers across all performance tiers. The ACA Connects Representatives highlighted that ACA Connects submitted a detailed analysis of the Commission's CAF Phase II weighting methodology. This analysis showed that the CAF Phase II auction's 90-point performance tier bid weight spread, which the Commission plans to mirror in the RDOF weighting methodology, favored bidding for lower-performance tiers and deterred bidding for higher-performance tiers. Because the spread was not technology-neutral, bidders for lower-performance tiers prevailed at higher prices than if competition was maximized.⁴ As a result, by discouraging participation across performance tiers at auction, the Commission's weighting methodology reduced inter-tier competition, decreased the overall cost-effectiveness of the CAF Phase II program, and undermined the opportunity for consumers in unserved areas to receive higher-performance broadband services.

The ACA Connects Representatives submitted that the Commission can avoid repeating the shortcomings of the CAF Phase II auction by increasing the weight assigned to the proposed RDOF Baseline performance tier. The weighting adjustment also will ensure that the Commission receives the best return on its RDOF investment. An increased bid weight spread accounts for the greater value of higher-performance services for an array of broadband use cases. Such higher-performance services would be provided over scalable, easily-upgradable infrastructure that could support future increases in broadband performance demands. The ACA Connects Representatives therefore urged the Commission to adjust the RDOF weighting methodology in line with its proposal to reflect the greater utility of higher-performance services.

Performance and Service Obligations. The Commission should leverage its limited funds to the greatest extent by increasing RDOF service provider requirements over time. A performance requirement update mechanism is necessary to ensure that RDOF support recipients meet their

to date prior to diverting RDOF funding from existing high-cost areas where it is undisputed that support is needed.

⁴ Some locations assigned in the CAF Phase II auction will receive high-performance Gigabit service, but the ACA Connects Representatives emphasized that the vast majority of these locations are in areas serviced by electric cooperatives, which have uniquely lower service costs than other providers not already present in the area.

Marlene H. Dortch
November 21, 2019
Page Four

statutory duty of providing “reasonably comparable” services to those offered in urban areas.⁵ Consumer demand for high broadband speeds and monthly usage allowances rose precipitously in recent years and shows no signs of stopping. Indeed, the record in this proceeding demonstrates that average U.S. consumer demand for broadband services already exceeds the speed/monthly usage allowance proposed for the RDOF Baseline performance tier, and this discrepancy will only be greater by the time the auction begins and when deployments actually occur. Consequently, the ACA Connects Representatives recommended that the Commission increase the RDOF performance requirements in year four and year eight of support to meet the comparable speeds and monthly data allowances provided in urban areas.

The ACA Connects Representatives also recommended that the Commission consider adopting a subscribership target for RDOF winning bidders – although one below the six-year, 70 percent benchmark proposed by the Commission. This will further ensure that networks constructed using RDOF support actually provide service to consumers reflecting the Commission’s objectives. However, because subscribership levels can be difficult to predict and vary considerably based on a number of external factors (*e.g.*, area income, short-term migration levels, and general interest in broadband subscription), the Commission should provide flexibility and adopt a presumption that RDOF support recipients with a six-year subscribership below a certain target (*e.g.*, 35 percent) would be required to explain to the Commission why they could not meet their subscriber target, including the steps the recipient has taken to meet the target, so the Commission may assess how the funding is being used. By establishing a workable subscribership target that favors transparency over the withholding of funding, the Commission can ensure that the networks constructed with RDOF support are being used to provide service to consumers without holding providers to an impractical standard.

Application Requirements. The Commission should require less technical and financial information at the RDOF short-form application stage from existing providers who plan to bid on performance/latency tiers matching their current service offerings. The key information proposed to be collected through the RDOF short-form application often can be obtained through data already available to the Commission, such as Form 477 filings. As a result, the Commission can streamline the RDOF short-form application process for providers with a proven track record of delivering quality broadband service to consumers that plan to bid on performance/latency tiers for which they currently provide service.

The Commission also should consider reducing the burdens placed on RDOF applicants by easing letter of credit requirements. The record demonstrates that letter of credit requirements can become a significant drag on smaller provider resources and divert funds better spent on broadband deployment. Therefore, the Commission should consider allowing performance bonds and other alternative arrangements to provide smaller providers regulatory relief while preserving the Commission’s ability to recover support from providers defaulting on their service and deployment obligations.

⁵ 47 U.S.C. § 214(b)(3).

Marlene H. Dortch
November 21, 2019
Page Five

State Engagement and Coordination. The Commission should facilitate state broadband program engagement and coordination as part of the RDOF. Working with state programs can help bring high-performance broadband services to unserved areas more quickly and efficiently than if the Commission goes it alone, and the ACA Connects Representatives pointed to the Commission's CAF Phase II partnership with New York state as a model of federal-state cooperation.⁶ However, the ACA Connects Representatives warned that there are costs to the Commission from state broadband program engagement and having state support recipients meet only the basic requirements imposed on all RDOF support recipients is not enough to ensure that a federal-state partnership results in more rapid deployment of higher-performance broadband networks than under a federal-only approach. Therefore, the Commission should require state support recipients to meet deployment and performance requirements exceeding those established for the RDOF and satisfy all eligibility requirements imposed by the Commission. These requirements will ensure that the Commission retains ultimate oversight over RDOF support distribution and fosters innovative state programs to spur the rapid deployment of high-performance broadband networks.

The ACA Connects Representatives concluded the meeting by reiterating that ACA Connects remains available to answer any Commission questions or provide further analysis regarding improvements to the RDOF to maximize overall participation and increase the program's overall cost-effectiveness. This letter is being filed electronically pursuant to Section 1.1206 of the Commission's rules.⁷

Sincerely,



Thomas Cohen
J. Bradford Currier
Kelley Drye & Warren, LLP
3050 K Street N.W.
Washington, DC 20007
202-342-8518
tcohen@kelleydrye.com
Counsel to ACA Connects – America's
Communications Association

cc (via email): Michael Janson (RBATF)
Jeff Prince (OEA)

⁶ See *Connect Am. Fund, ETC Annual Reports and Certifications*, WC Docket Nos. 10-90, 14-58, Order, 32 FCC Rcd 968 (2017).

⁷ 47 C.F.R. § 1.1206.

Marlene H. Dortch
November 21, 2019
Page Six

Ryan Palmer (WCB)
Kirk Burgee (WCB/RBATF)
Lauren Garry (WCB)
Katie King (WCB)
Ian Forbes (WCB)
Alex Minard (WCB)