

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

---

---

In the Matter of	)	
Connect America Fund	)	WC Docket No. 10-90
ETC Annual Reports and Certifications	)	WC Docket No. 14-58

---

**COLORADO BROADBAND DEPLOYMENT BOARD  
PETITION FOR WAIVER**

## **I. INTRODUCTION**

The Federal Communications Commission (“FCC” or “Commission”) understands how imperative it is to close the digital divide in America. Ensuring high-speed broadband internet access for all citizens is a shared goal for the FCC and the Colorado Broadband Deployment Board (“Board”), and coordination between the FCC and the Board over this shared goal would effectively serve citizens in the most remote areas in Colorado who still lack the vital resource of internet access. To that end, the Board is seeking to work with the FCC to allocate certain Remote Areas Fund (“RAF”) money and Board grants in tandem to maximize support.

Specifically, in 2018, the Colorado General Assembly instructed the Board to seek funding from the FCC’s Remote Areas Fund for the Board to allocate to providers in Colorado.<sup>1</sup> Pursuant to that mandate, the Board now petitions for a waiver from the FCC’s rule contained in 47 C.F.R. § 54.801 requiring the use of competitive bidding to determine the recipients of RAF support so that the Board can select who will receive RAF support in Colorado.<sup>2</sup> The Board recognizes the shared mission and responsibility for universal service and hopes to work alongside the FCC to develop strategies to expand broadband availability in remote areas in Colorado.

## **II. BACKGROUND**

### **A. Remote Areas Fund**

The Remote Areas Fund is the FCC’s next step towards achieving its objective of bringing broadband to unserved, extremely high cost areas.<sup>3</sup> The RAF auction will have a budget of at least

---

<sup>1</sup> COLO. REV. STAT. § 40-15-509.5(10.6)(a)(I) (2018) (“Following the model of New York’s Petition for Expedited Waiver, the Board, on or before January 1, 2019, shall petition the FCC for a waiver from the FCC’s rules concerning the remote areas fund to seek FCC authorization for the board to itself allocate remote areas fund money for broadband deployment projects in Colorado.”).

<sup>2</sup> The Board submits this petition pursuant to 47 C.F.R. § 1.41 (2018).

<sup>3</sup> *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 6018, paras. 195-96 (2016) (*Phase II Auction Order*).

\$100 million in annual support with the goal of addressing “remote areas where the cost of deploying traditional terrestrial networks is extremely high.”<sup>4</sup> The FCC has adopted a rule to award RAF support through a competitive bidding process, with the goal of commencing that auction within a year of the close of the Connect American Fund (“CAF”) Phase II auction.<sup>5</sup> According to the FCC’s CAF Phase II auction results, 2,132 locations remain in Colorado that do not have 10/1 Mbps and did not receive a winning bid during the Phase II auction;<sup>6</sup> even more remain without 25/3 Mbps. The Board expects the FCC will, at a minimum, designate the census blocks lacking Phase II winning bidders as eligible for RAF support, and potentially may include additional areas in the RAF auction as well. Thus, this continued federal support may be critical in the deployment of broadband in some of Colorado’s most remote areas.

## **B. Colorado Broadband Deployment Program**

The Board is a grant-awarding body that disburses funds to providers who will build out infrastructure and deploy broadband in unserved areas in Colorado.<sup>7</sup> Since its creation in 2014, the Board has awarded \$11,500,000 in grants for broadband projects throughout the state.<sup>8</sup> The Board requires applicants to provide minimum download/upload speeds of 25/3 Mbps and to secure independent funding for at least 25% of the total cost of the proposed project.<sup>9</sup> Additionally, providers must complete the proposed projects within two years, or one year in the case of

---

<sup>4</sup> *Phase II Auction Order*, 31 FCC Rcd at 6018, para. 195.

<sup>5</sup> *Phase II Auction Order*, 31 FCC Rcd at 6018-19, paras. 197-99.

<sup>6</sup> See generally CONNECT AMERICA FUND PHASE II AUCTION RESULTS, <https://auctiondata.fcc.gov/public/projects/auction903>.

<sup>7</sup> See generally COLO. REV. STAT. § 40-15-509.5(8) (2018) (outlining grant award criteria and process).

<sup>8</sup> COLORADO DEPARTMENT OF REGULATORY AGENCIES, THE BROADBAND FUND, <https://www.colorado.gov/pacific/dora-broadband-fund/how-fund-works> (last visited Nov. 27, 2018).

<sup>9</sup> See COLO. REV. STAT. § 40-15-509.5(8)(d) (2018); COLORADO DEPARTMENT OF REGULATORY AGENCIES, THE BROADBAND FUND, <https://www.colorado.gov/pacific/dora-broadband-fund/broadband-how-to-apply> (last visited Nov. 27, 2018).

incumbent providers who successfully exercise their statutory right of first refusal.<sup>10</sup> Unlike the FCC's CAF, support is not awarded based on census blocks, but rather based on geographic areas defined by the applicant. Projects must meet certain location requirements: the area must lie outside of a municipal boundary or be for a city that has a population of fewer than 7,500.<sup>11</sup> The Board also considers a project's consistency with a regional broadband plan or whether the project has been endorsed by local entities with jurisdiction over the area, in determining whether to grant an application.<sup>12</sup>

In 2018, the Colorado General Assembly passed a law refining the Board's state funding, which is projected to add roughly \$115 million to the funds available to the Board through 2023.<sup>13</sup> While this increased amount of state support will be crucial to continuing to deploy broadband in Colorado's most remote areas, Colorado has many areas where even this funding likely will not be sufficient to incentivize service providers to provide broadband in the most difficult-to-serve areas.

### **III. REQUEST FOR WAIVER**

The Board specifically seeks a waiver from the rule requiring that the FCC determine which providers receive support from the RAF through a competitive bidding process as provided in 47 C.F.R. § 54.801.<sup>14</sup> Instead, the Board respectfully requests that the FCC set aside a fair and proportional amount of support for Colorado remote areas and allow the Board to select the

---

<sup>10</sup> COLO. REV. STAT. §§ 40-15-509.5(8)(g) and (k)(III) (2018).

<sup>11</sup> COLO. REV. STAT. § 40-15-509.5(8)(a) (2018); *see also* COLORADO BROADBAND DEPLOYMENT BOARD POLICIES, GRANT AWARD POLICY, p. 1 (<https://www.colorado.gov/pacific/dora-broadband-fund/deployment-board>).

<sup>12</sup> COLO. REV. STAT. § 40-15-509.5(8)(e)(II) (2018).

<sup>13</sup> COLORADO GENERAL ASSEMBLY LEGISLATIVE COUNCIL STAFF, FINAL FISCAL NOTE ON SB 18-002: FINANCING RURAL BROADBAND DEPLOYMENT, p. 2, [https://leg.colorado.gov/sites/default/files/documents/2018A/bills/fn/2018a\\_sb002\\_f1.pdf](https://leg.colorado.gov/sites/default/files/documents/2018A/bills/fn/2018a_sb002_f1.pdf).

<sup>14</sup> 47 C.F.R. § 54.801 (2018).

recipients of the support, subject to conditions designed to meet the federal and state mutual objective for universal broadband service. This would enable coordination and maximization of support for Colorado's remote areas, without compromising the performance, technical, and financial standards as set forth by both the Board and the FCC.

The Board previously submitted another request for waiver during Phase II of the CAF auction.<sup>15</sup> While the FCC's Wireline Competition and Wireless Telecommunications Bureaus rejected that petition,<sup>16</sup> the Board submits this petition under different circumstances. The FCC is not in the final stages of preparing for the RAF auction. Granting the instant waiver will not delay the RAF auction because the FCC has not yet finalized the substantive RAF rules on a number of key issues, including the performance obligations, deployment schedule, and term of RAF support, nor has it sought comment on auction procedures. It has not set a filing deadline for short-form applications, and it has not set a date for commencement of bidding in the RAF auction. Thus, the Board believes this request to work with the FCC to generate innovative solutions for deploying broadband in Colorado's remote areas is appropriate at the current juncture for the RAF. Additionally, the Board has attempted to address issues identified by the FCC in its first petition. As such, the Board requests that the FCC consider this request for waiver in light of the different circumstances surrounding the RAF.

#### **A. Good Cause Exists for Waiver**

The FCC may waive its rules for good cause.<sup>17</sup> Waiver is appropriate when special circumstances warrant deviation from the general rule, and such deviation will serve the public

---

<sup>15</sup> Colorado Broadband Deployment Board Petition for Waiver, WC Docket No. 10-90 et al. (filed April 23, 2018) (*CO Board Petition*).

<sup>16</sup> *Connect America Fund et al.*, Order on Colorado Broadband Deployment Board Request for Waiver of the Connect America Fund Phase II Competitive Bidding Rules, WC Docket No. 10-90, DA 18-709 (July 6, 2018) (*Order on CO Board Petition*).

<sup>17</sup> 47 C.F.R. § 1.3 (2018).

interest.<sup>18</sup> Because Colorado has special circumstances related to its broadband program and state challenges and because granting the waiver will serve the public interest, the FCC should waive its rules for Colorado for good cause.

**i. Special circumstances exist in Colorado.**

There are special circumstances in Colorado that warrant waiver of the FCC's rules. Like New York (whose petition for waiver was granted by the FCC), Colorado has an established, well-funded state broadband program whose timing and overbuilding restrictions create unique issues that can be overcome through coordination with the FCC.

First, Colorado has its own state program that is investing a substantial amount of money in deploying broadband to areas that are also likely to be eligible for the federal auction.<sup>19</sup> To date, Colorado has awarded \$11,500,000 in grants for broadband deployment. The relationship between the available funding and the remaining auction-eligible locations in Colorado is analogous to New York. New York set aside \$200 million in state funding for Phase 3 of its broadband deployment auction, which included many CAF Phase II eligible locations.<sup>20</sup> In the same way, Colorado has invested and will continue to substantially invest in deploying broadband to remote areas, budgeting over \$100 million for its broadband program to provide service in areas lacking 25/3 Mbps.

Second, like New York, Colorado has an existing, operational program that is poised to quickly implement its next rounds of funding while the Commission is in the process of seeking

---

<sup>18</sup> *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969)).

<sup>19</sup> *Connect America Fund; ETC Annual Reports and Certifications*, Order, 32 FCC Rcd. 968, 971-72, para. 14 (Jan. 26, 2017) (*New York Auction Order*).

<sup>20</sup> *New York Auction Order*, 32 FCC Rcd. at 972, para. 13; New York State Petition for Expedited Waiver, WC Docket No. 10-90 et al. at pp. 13-14 (filed Oct. 12, 2016) (*New York Petition*).

comment on and finalizing the RAF rules and auction procedures.<sup>21</sup> Colorado faces unique timing considerations that warrant waiver because the Board proceeds with its grant cycles for broadband deployment as funding becomes available.<sup>22</sup> This creates a similar risk as raised by New York whereby the Board could award a grant for an area that is eligible for RAF support, and a different provider could subsequently bid on support for that same area in the RAF auction, prior to the Colorado awardee completing its project. This creates potential for overbuilding, a waste of the FCC's limited resources.

Finally, Colorado is subject to a statutory prohibition on providing duplicative funding to areas receiving federal support.<sup>23</sup> A number of other state grant programs, including New York and Minnesota, allow state funding to be provided in eligible geographic areas to supplement the federal funding to achieve higher speeds than the federal minimum.<sup>24</sup> However, the Colorado Board is barred from directing state funding to areas that receive federal support that would constitute “overbuilding.”<sup>25</sup> Accordingly, there is a particularly acute need for synergy between the federal and Colorado programs so that the Board can target our state monies in an effective way.

**ii. Granting a waiver for Colorado is in the public interest.**

Providing a role for the Board to select providers to serve the most remote areas of Colorado, using its unique locally-based knowledge of the communities and potential service providers, serves the public interest by incentivizing federal-state cooperation and ensuring more

---

<sup>21</sup> *New York Auction Order*, 32 FCC Rcd. at 973, para. 15.

<sup>22</sup> COLO. REV. STAT. § 40-15-509.5(5)(d) (2018). The Board currently is poised to hold two grant application cycles per year. COLORADO DEPARTMENT OF REGULATORY AGENCIES, THE BROADBAND FUND, <https://www.colorado.gov/pacific/dora-broadband-fund/broadband-how-to-apply> (last visited Nov. 27, 2018).

<sup>23</sup> COLO. REV. STAT. §§ 40-15-509.5(10.7)-(10.9) (2018).

<sup>24</sup> *See e.g. New York Petition*, WC Docket No. 10-90 et al. at p. 8 (filed Oct. 12, 2016).

<sup>25</sup> *See* COLO. REV. STAT. §§ 40-15-509.5(8.5)(c)-(c.5), (10.7)(b) (2018).

rapid broadband access for consumers. Furthermore, grant of the requested waiver would be in the public interest because it would help deploy broadband in some of the most remote areas in Colorado without materially compromising the competitiveness of the national RAF auction.<sup>26</sup> Therefore, good cause exists for the FCC to grant the Board's petition by waiving 47 C.F.R. § 54.801.

By virtue of the Board's statutory role in awarding grants for providers to build out broadband access in unserved areas in Colorado, the Board has access to nuanced information about broadband access throughout Colorado. As part of its grant application process, the Board considers endorsement of projects by local entities,<sup>27</sup> how projects advance regional broadband plans,<sup>28</sup> and address-level service information.<sup>29</sup> Furthermore, Colorado's Office of Information Technology develops complex mapping of broadband service throughout the state at the address level, which the Board and service providers alike may access and use.<sup>30</sup> Thus, the Board is well-situated to examine the broadband needs of remote areas in Colorado with a fine point, effectively tailoring deployment efforts to the needs of communities. Allowing the Board to continue in this approach alongside the FCC ensures the most efficient and targeted utilization of both state and federal support.

Moreover, the public interest will be served by developing new models for federal-state cooperation to advance service to remote areas, which by definition are the areas most challenging

---

<sup>26</sup> After Phase II of the CAF auction, the number of remaining areas likely eligible for RAF support in Colorado is not large as compared to other states. If Colorado bidders were not participating in the RAF auction, the impact on the national auction would likely be negligible.

<sup>27</sup> COLO. REV. STAT. § 40-15-509.5(8)(e)(II) (2018).

<sup>28</sup> See COLORADO DEPARTMENT OF REGULATORY AGENCIES, THE BROADBAND FUND, <https://www.colorado.gov/pacific/dora-broadband-fund/grant-criteria>, (last visited Nov. 27, 2018).

<sup>29</sup> COLO. REV. STAT. § 40-15-509.5(8)(a) (2018).

<sup>30</sup> See COLORADO BROADBAND OFFICE, BROADBAND TOOLS, <http://broadband.co.gov/resources/broadband-tools/> (last visited Nov. 27, 2018).



to serve. Colorado has taken responsibility for deploying broadband across the state and is developing innovative and high-quality methods for doing so. In many ways, Colorado is uniquely aligning itself with the mission of the FCC in its committed pursuit of the shared goal of universal service.<sup>31</sup> Permitting Colorado to work hand-in-hand with the FCC through coordinating the two programs could encourage other states to similarly develop innovative and effective solutions to deploying broadband in tandem with the FCC.

Finally, Colorado law requires providers to complete projects quickly -- within two years and in some cases within one year -- expediting the timeline for when consumers will have broadband access.<sup>32</sup> The FCC found that granting New York's request for waiver would serve the public interest by accelerating the deployment of broadband in New York on a faster timeline than required under the FCC's CAF Phase II auction deployment schedule.<sup>33</sup> The Board anticipates that RAF support recipients may be subject to the same six-year deployment schedule adopted for the Phase II auction winners, understanding that the FCC reserves the right to make adjustments to the interim and final service milestones as necessary order to encourage participation.<sup>34</sup> The public interest would be served by allowing the Board to select recipients of RAF support, with the Colorado deployment timetables serving as a minimum floor and the FCC's deployment requirements for the RAF as a backstop.

### **B. Request for Support Allocated to Colorado**

With the shared goal of universal service in mind, the Board respectfully requests that the FCC allow the Board to select the recipients of the Remote Areas Fund support through its established procedures and criteria. Similar to the conditions adopted with the New York waiver,

---

<sup>31</sup> 47 U.S.C. § 254(f) (2018).

<sup>32</sup> COLO. REV. STAT. §§ 40-15-509.5(8)(g) and (k)(III) (2018).

<sup>33</sup> *New York Auction Order*, 32 FCC Rcd. at 973, para. 15.

<sup>34</sup> *Phase II Auction Order*, 31 FCC Rcd at 6020, para. 203.

selected recipients would have to meet both the Board and the FCC's standards and requirements in order to receive support. Understanding the FCC's broader commitment to universal service nationally, the Board asks that the FCC set aside a certain amount of RAF support for Colorado based on a fair and proportional determination of Colorado's share.<sup>35</sup>

Deploying broadband in Colorado has significant challenges that could be overcome through coordination of available resources. If the Board was permitted to select the recipients of RAF support, using its criteria and deeper knowledge of the status of broadband deployment in Colorado, the Board could more effectively advance universal service in Colorado without compromising the FCC's objectives. As discussed above, there is a significant and real risk that, absent closer coordination, federal and state funding could be unnecessarily wasted through overbuilding. By allowing the Board to select recipients of RAF support in Colorado, grant of the requested waiver would ensure that support will not be duplicative and that build-out would occur more rapidly. Given the topographical and demographic challenges in Colorado, as well as the current statutory prohibition on duplicative support at the federal and state level, the need for Colorado's broadband program to work in tandem with federal funding is imperative.<sup>36</sup> The Board hopes to define the exact contours of the interplay between the FCC and Board requirements through further discussion with the FCC regarding how grant of waiver could be structured to meet our mutual objectives.

#### **IV. CONCLUSION**

---

<sup>35</sup> The Board hopes that this petition will be a starting point to discuss further with the FCC how the Board could play a larger role in the administration of RAF funding in Colorado in a way that is fair to other states. For example, in determining the amount of support potentially allocated to Colorado, the FCC could look to a pro rata amount based on eligible census blocks or use reserve pricing to adjust the proportional amount.

<sup>36</sup> COLO. REV. STAT. §§ 40-15-509.5(8)(c.5) and (10.9)(b) (2018).

Like the FCC, Colorado takes its charge to close the digital divide seriously. Pursuant to its legislative mandate, the Board now requests a waiver from the FCC regarding one specific RAF rule in order to coordinate RAF support with ongoing support provided through the Board's own program to better facilitate broadband deployment in rural areas in Colorado. The Board looks forward to working more with the FCC on how our respective programs can be best coordinated and support maximized.

Respectfully submitted this 30th day of November, 2018.

By:  
/s/ Jordan Beezley  
Jordan Beezley, Director  
Broadband Deployment Board  
1560 Broadway, Suite 1550  
Denver, CO 80202  
(303) 894-7752  
jordan.beezley@state.co.us

CYNTHIA H. COFFMAN  
Attorney General  
ABBY CHESTNUT, 51189\*  
Assistant Attorney General  
ANGELA LITTLE, 39608\*  
Assistant Attorney General  
Business & Licensing Section  
Attorneys for Broadband  
Deployment Board  
Office of the Attorney General  
1300 Broadway, 8th Floor  
Denver, CO 80203  
(720) 508-6353  
abby.chestnut@coag.gov  
(720) 508-6382  
angela.little@coag.gov  
\* Counsel of Record