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
	)	
Digital Opportunity Data Collection	)	WC Docket No. 19-195

REPLY COMMENTS OF USTELECOM—THE BROADBAND ASSOCIATION

Patrick Halley
Senior Vice President, Policy & Advocacy
Michael D. Saperstein, Jr.
Vice President, Policy & Advocacy
601 New Jersey Avenue, NW, Suite 600
Washington, D.C. 20001
202-326-7200

October 21, 2019

EXECUTIVE SUMMARY

The record in this proceeding confirms the importance of three main principles for the Commission in establishing the Rural Digital Opportunity Fund: (1) investing in rural terrestrial facilities that can be used as a springboard for next generation communications; (2) ensuring a seamless transition between providers with equitable and clearly-defined roles and responsibilities; and (3) making use of the best possible data as a foundational element of the Rural Digital Opportunity Fund. Beyond those themes, additional refrains emerged in comments that will also play large roles in the auction's overall success, including the unreasonableness of the Commission's letter of credit requirement and the need to revise certain auction design elements and principles to ensure an efficient auction that delivers the broadband future of rural America.

Invest Now for Rural America's Present and Future

- This proceeding brings together a diverse group of stakeholders that support the same goal of using the Rural Digital Opportunity Fund to invest in low-latency technologies. Given the breadth of stakeholder support for low-latency technologies, the Commission is compelled to act, whether that is adding additional weights to high-latency bids or evaluating if they are better suited for Phase II of the program instead of Phase I.
- Viasat attempts to steer the Commission towards preserving the high-latency tier and putting it at the forefront of the Fund using both legal and policy arguments. These theories demonstrate a potential low cost auction, but fail to address the cost for the consumer, who the record demonstrates considers satellite to be a last resort option.
- Viasat's Administrative Procedures Act are misplaced; the Commission can maintain competitive neutrality while also making reasoned policy decisions.

There is Wide Support to Clearly Address Transition Roles & Responsibilities

- USTelecom agrees that it is an important public policy and statutory goal to ensure that those who are connected stay connected, and that those rural American consumers and business can continue to access quality broadband at affordable rates on an ongoing basis. The most straight-forward manner of ensuring continuity of voice service is to make clear now that Rural Digital Opportunity Fund winners must follow the Commission's existing rules for ETCs. In following this course, the Commission should explicitly reject proposals to require ILECs to remain as the voice provider in areas won by a new provider.
- Given that the ILEC no longer retains any obligation to serve the supported area once a new ETC is named, the Commission should take steps in this proceeding to streamline the ILEC's exit from the market should the ILEC choose to do so. At a minimum, the Commission should declare that the new high-cost ETC's voice service automatically satisfies the "adequate replacement test" under the Commission's rules governing discontinuance of a legacy voice service in the context of a technology transition.
- The Commission should commit to support areas that are in transition. This starts with providing the seventh year of funding and following the principle of providing support for high-cost obligations where the Commission wishes the price cap ILEC to continue fulfilling its duty.

Amend Accountability Incentives for Auction Participants

- The Commission should rethink is accountability approach to incentivize auction bidders with a history of bidding success. While the Commission proposes accountability elements for the Fund, they are impractical and inefficient. To guarantee the accountability results the Commission seeks, USTelecom recommends making changes to the letter of credit requirement, subscribership metric proposal, and short form application process based on experience and review of the record.

Recognize the Implications of Limited Data

- The Commission should take steps to improve or correct known data errors that could affect the auction; it should also hold bidders harmless for data errors at this time given the reliance on outdated data.

Improve Auction Design

- The auction design should be improved for efficiency and promotion of the Commission's goals. It can do so through:
    - Refining auction mechanics by improving on the CAF Phase II Auction data;
    - Adding an intermediate 50/6 speed tier to promote additional competition; and
    - Taking steps to avoid providing duplicative broadband deployment support, including a limited challenge process.

TABLE OF CONTENTS

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
	)	
Digital Opportunity Data Collection	)	WC Docket No. 19-195

REPLY COMMENTS OF USTELECOM—THE BROADBAND ASSOCIATION

USTelecom – The Broadband Association[1] respectfully submits these reply comments in response to the Federal Communications Commission's (Commission) Notice of Proposed Rulemaking proposing to create the Rural Digital Opportunity Fund.[2] The record in this proceeding confirms the importance of three main principles for the Commission in establishing the Rural Digital Opportunity Fund: (1) investing in rural terrestrial facilities that can be used as a springboard for next generation communications; (2) ensuring a seamless transition between providers with equitable and clearly-defined roles and responsibilities; and (3) making use of the best possible data as a foundational element of the Rural Digital Opportunity Fund. Beyond those themes, additional refrains emerged in comments that will also play large roles in the auction's overall success, including the unreasonableness of the Commission's letter of credit

[1] USTelecom is the nation's leading trade association representing service providers and suppliers for the broadband innovation industry. Its diverse member base ranges from large publicly traded communications corporations to small companies and cooperatives – all providing advanced communications and broadband services to hundreds of millions of customers around the world.

[2] *Rural Digital Opportunity Fund, Connect America Fund*, Notice of Proposed Rulemaking, WC Docket Nos. 19-126, 10-90, FCC 19-77 (rel. Aug. 2, 2019) ("Notice").

requirement and the need to revise certain auction design elements and principles to ensure an efficient auction that delivers the broadband future of rural America.

I. RURAL AMERICAN CONNECTIVITY IS BEST SERVED TODAY AND TOMORROW BY INVESTING IN TERRESTRIAL BROADBAND NOW

A. A Diverse Group of Stakeholders Supports Investing in Low-Latency Technologies

The record speaks loudly that investing in terrestrial broadband, which inherently requires deeper fiber deployment, will enhance rural connectivity today and offer a gateway to next generation 5G services. Parties representing many different viewpoints that do not necessarily agree on other aspects of how the Rural Digital Opportunity Fund should be shaped have coalesced around the need to eliminate or at least more substantially weight the high-latency tier. For example, the Buckeye Hills Regional Council finds that "[e]liminating high latency services will avoid investment in satellite-based options that do not offer a long-term solution for the needs of the region. Relegating Appalachia to satellite services will extend the digital divide rather than helping to close it," particularly given the program's 10 year term.[3] INCOMPAS touts the benefit of investing today in fiber penetration because it "can support residential and business services via fixed wireless solutions, higher speed DSL, and fiber to the premise. And . . . 5G small cells will be highly reliant on fiber so pushing it deeper into rural America through the RDOF is important to meeting rural America's 5G needs."[4] Verizon, recognizing that satellite broadband can be the most effective solution in some extremely high-cost cases, calls on the Commission to eliminate the high-latency tier for at least Phase I of the Rural Digital Opportunity Fund because "fiber infrastructure . . . will support future increases in

[3] Buckeye Hills Regional Council Comments at 9.

[4] INCOMPAS Comments at 11.

broadband speeds and also provide the foundation for the deployment of both 4G and 5G mobile wireless services in rural areas."[5] There are numerous other examples of the same argument in the record made by a variety of stakeholders.[6] Further, a recent study by the Brattle Group, which is attached and incorporated by reference, explains in significant detail all of the links between the choice to invest today in rural fiber and future prosperity in rural America.[7]

The breadth of stakeholder agreement—of both the industry and public representatives—on the concept of limiting Rural Digital Opportunity Fund investment in high-latency technologies compels Commission action, leaving the question of whether it is better to eliminate the high latency tier altogether or to weight it more heavily in the auction. USTelecom supports Verizon's position that it is best to conduct the Phase I auction without the high-latency tier and evaluate its utility in Phase II of the program. Phase I of the Rural Digital Opportunity Fund is just the beginning of a program designed to play a long-lasting role in the future of rural connectivity. There are many advantages to delaying a decision on including satellite service until Phase II. Because of the proposal to complete the Rural Digital Opportunity Fund in at least two stages, we know that the Phase I is not necessarily designed to deliver broadband to every rural location—Phase II will attempt to serve all of the locations after Phase I. Therefore, it stands to reason that the strength of satellite broadband—geographic coverage—may be a more important attribute at that time based upon the Commission's goals for Phase II (or,

[5] Verizon Comments at 4-5.

[6] *See e.g.*, Mississippi Public Service Commission Comments at 2 (proposing to change the high-latency tier's requirement so that providers would have to offer latency of ≤500ms, which is essentially beyond the capabilities of geosynchronous-orbit satellites); NRECA Comments at 8 (proposing to increase the latency requirement to ≤600ms and increasing its weight to 50); *see also* ITTA Comments at 18-20; Windstream Comments at 11-12.

[7] Coleman Bazelon, The Brattle Group, *Public Interest Benefits of Expanding Fiber Networks* (Oct. 2019) *available at* https://www.ustelecom.org/wp-content/uploads/2019/10/Public-Interest-Benefits-of-Expanding-Fiber-Networks.pdf ("*Brattle Group Fiber Benefits Study*") (attached as Appendix A).

alternatively, there could be a satellite-focused program to account for locations remaining after Phase II).

B. Viasat's Arguments to Preserve the High Latency Tier are Misguided

The record is clear that the vast majority of commenters from numerous backgrounds favor either eliminating or greatly weighting the high-latency tier, but Viasat attempts to make numerous policy and legal arguments as to why the Commission should preserve and even provide more favorable treatment of the high-latency tier; the Commission should reject each of them. Regarding policy arguments, even if we accept Viasat's analysis that it was able to cover 190,000 locations in the CAF Phase II Auction where terrestrial broadband would only have covered an additional 2,548 locations with the same support,[8] this is not necessarily a positive result for those 190,000 locations that should be carried forward into the Rural Digital Opportunity Fund's design.

Consumers place a premium on low-latency services and the market bears this out. According to the Commission's most recent Internet Access Services report, there are 1.872 million satellite subscribers in the U.S. out of 108.188 million total fixed high speed connections (at any speed).[9] In other words, despite being available to 99.8 percent of the developed census blocks in the U.S.,[10] satellite service holds a 1.7 percent market share. While its coverage capability can be useful in serving the most uneconomic locations, its adoption rate indicates that its service is not in line with consumer preferences. Viasat concluded that it was able to supply broadband to a large number of locations at zero net cost to the Commission, but did not ask

[8] Viasat Comments at 7. *But see Brattle Group Fiber Benefits Study* at 20-22 calling this assumption into question.

[9] FCC, Office of Economics & Analytics, Internet Access Report Status as of Dec. 31, 2017, 16 at Figure 11 (Aug 2019) https://docs.fcc.gov/public/attachments/DOC-359342A1.pdf.

[10] *Id.* at 6.

whether this is truly a desirable result.[11] The proper analysis should ask the question, "at what cost to the consumer?" As the Institute for Local Self Reliance put it, "Internet access via satellite remains a last resort among American households. . . . So long as American households consider satellite Internet access a last resort, the Commission should as well, rather than allowing it to compete in the bidding with greater weight."[12]

Nor does investing in satellite service today further the Commission's goals for future 5G connectivity in rural America. The *Brattle Group Fiber Benefits Study* examines the positive externalities associated with driving fiber deeper into rural America.[13] The study finds that:

> The most important positive externality of extending fiber deployments deeper into networks is the support the enhanced networks will provide to 5G deployments in rural areas. The expected benefits of 5G are well known; seeing that rural communities share in those benefits is important. To do so, rural communities need the high capacity fiber infrastructure necessary to provide the backhaul to 5G and IoT networks. Such infrastructure is key to providing the high capacity and low latency that provide so much of the benefits from these new, next generation networks. Simply put, if fiber is not sufficiently extended in to rural America, these communities will not have access to the 5G networks and IoT capabilities that Americans in urban areas experience, and the universal service objectives of Congress will not be met.[14]

In addition, the *Brattle Group Fiber Benefits Study* also finds that rural anchor institutions and agricultural capabilities will also benefit from the policy decision to prefer terrestrial, fiber-backed broadband solutions.[15]

Viasat does not argue the fact that there are 5G benefits associated with preferring terrestrial broadband in the Rural Digital Opportunity Fund, but instead suggests that the

[11] Viasat Comments at 9.

[12] Institute for Self Reliance Comments at 1-2.

[13] *Brattle Group Fiber Benefits Study* at 5-14.

[14] *Id.* at 8 (internal citations omitted).

[15] *Id.* at 14-18.

Commission is bound to ignore all positive externalities associated with terrestrial broadband deployment, going so far as to say that the Commission is prohibited by statute from doing so.[16] Viasat's arguments are facially deficient. It cites to various aspects of the Commission's commitment to universal service principles as support, when in fact those citations undermine its argument. Viasat cites the portion of the Commission's website that says "The Act established principles for universal service that specifically focused on increasing access to *evolving services* for consumers living in rural and insular areas. . . ."[17] The very text cited guides that the Commission should be focused exactly on *evolving services* for rural; it is not only about today's technology but investing in an evolving standard of technology for rural America, which includes 5G networks that depend on access to robust terrestrial backhaul infrastructure. Viasat then doubles down on its errors by citing the Commission's interpretation of the Communications Act's universal service charge as a means to support its statement that the Commission should focus solely on retail service availability - "[i]t is the Commission's statutory obligation to maintain the USF consistent with that mandate and to continue to support the *nation's telecommunications infrastructure* in rural, insular, and high-cost areas."[18] Supporting the nation's "telecommunications infrastructure" means expanding last mile retail connections while also deploying the backhaul necessary for those connections and other essential services (*i.e.* 5G); this is directly in line with, not contrary to, congressional and Commission objectives. The Rural Digital Opportunity Fund is an appropriate means to ensure the entire structure is in place necessary to *deliver* the last mile connection—so that "Americans

[16] Viasat Comments at 20-21.

[17] *Id.* (emphasis added) (citing FCC, "Universal Service," https://www.fcc.gov/general/universal-service (last visited Oct. 21, 2019)

[18] *Id.* at 21.

are served by *networks* [not just last mile connections] that support high-speed Internet access—in addition to basic voice service—where they *live, work, and travel*."[19] While satellite broadband may have a role to play in the overall rural broadband ecosystem, the clear policy decision should be to simultaneously maximize last mile connections while also enabling the numerous positive externalities that flow from terrestrial broadband.[20]

Viasat also makes a number of arguments related to the Administrative Procedure Act that are unpersuasive.[21] It argues that speed is the most important factor in a consumer's decision-making process and therefore the Commission's policy rationale for proposing to weight latency higher is arbitrary because it is not technologically neutral, allegedly in violation of the Commission's principle of competitive neutrality. This is a red herring that the Commission can easily address. Competitive neutrality is one of seven statutory and Commission-established principles, and as the 10th Circuit Court of Appeals stated in *Qwest v. FCC*, "[t]he FCC must base its [universal service] policies on the principles, but any particular principle can be trumped in the appropriate case."[22] First, adopting a preference for low-latency services is not a violation of neutrality. High-latency services are, as proposed in the Notice, eligible for participation in the auction and some areas may be served by such services as a result of the auction. Preferring speeds at 1 Gbps or 100 Mbps over 25 Mbps, and even establishing 25 Mbps as a floor for participation by definition means that some legacy wireline services are not going to be supported, including DSL service in many areas. That is not a violation of

[19] *Id.* at 20-21 (emphasis added).

[20] *See Brattle Group Fiber Benefits Study* at 7-8 ("A regulator's objective should be to maximize total benefit from a policy, i.e. take externalities into account. For the current proceeding, this means that the Commission should recognize the positive externalities from fiber deployments in rural communities that go beyond provision of broadband to residences.").

[21] Viasat Comments at 12-21.

[22] 258 F.3d 1191, 1200 (10th Cir. 2001).

competitive neutrality, it is a reasonable policy choice. The same is true of the preference for low-latency technology.

Second, other principles are also at play. The statute establishes "quality service" as a principle.[23] It is the Commission's prerogative to establish a policy preference for low latency service because it is a higher quality product without the limitations of high-latency service. The same is true for a preference of higher speed service over technologies that cannot meet the 25 Mbps threshold. As described above, there are a number of reasons clearly expressed in the marketplace causing consumers to plainly prefer terrestrial-based services, indicating their belief that high latency satellite services are lower quality options.[24] For example, high latency satellite service does not sufficiently promote job creation in rural America because it is limited in its ability to enable teleworking. In describing the "need for" the Rural Digital Opportunity Fund, the Commission states that "broadband access is critical to *economic opportunity*, *job creation*, education and civic engagement."[25] Many businesses with teleworkers require those employees to log into the business via a Virtual Private Network (VPN).[26] Yet satellite service is generally incompatible with VPN use, with Viasat's website stating that "VPNs — often used to connect at-home workers to corporate networks — may be very slow with Viasat Internet. Some VPNs may not work at all."[27] This limited connectivity for vital business links does not align with the

[23] 47 U.S.C. § 254(b)(1).

[24] *See discussion supra* at 4-5.

[25] Notice at para. 2 (emphasis added).

[26] *See, e.g.*, Oliver Rist, PCMag.com, *4 Reasons Your Business Should Use a VPN Service* (Nov. 12, 2018) https://www.pcmag.com/article/364887/4-reasons-your-business-should-use-a-vpn-service. ("Businesses generally employ VPNs to make sure that outside users accessing their data centers are authorized and using an encrypted channel. Or they use them to connect their New York City headquarters with the field office in White Plains, for example. They do that by creating a permanent VPN tunnel that IT establishes between the VPN-capable routers in NYC and those in White Plains. Such a connection lets the folks in White Plains see the entire corporate network as though they were in NYC, without having to log in every time they want to access a server or an app.").

[27] Viasat, Viasat Internet FAQ's, https://www.exede.com/viasat-internet/ (last visited Oct. 21, 2019).

Commission's goal of promoting job growth in rural America and suggests it is a lower quality service.

Another principle is to ensure that consumers in rural areas have access to services that are "reasonably comparable to rates charged for similar services in urban areas."[28] While satellite service can be provided in urban areas, a very small portion of urban consumers elect to take the service, in part because of the limitations of high latency service.[29] Thus, if the Commission were to treat high latency satellite service the same as lower latency alternatives, thus increasing the likelihood that many rural consumers would be served only by high-latency satellite service, then the Commission would not be ensuring that rural consumers were getting access to service that is "reasonably comparable to those services provided in urban areas."

Additionally, Section 254(b)(6) says that "[e]lementary and secondary schools and classrooms, health care providers, and libraries should have access to advanced telecommunications services…"[30] To be sure, the Commission has established the E-Rate and Rural Healthcare Programs to accomplish this goal. With that said, the statute does not suggest that the only way in which this principle can be met is through stand-alone programs as established by the Commission. Therefore, if the Commission's policy choice to focus on terrestrial last mile connections that depend on fiber backhaul (regardless of technology used at the last mile) with the added benefit of extending fiber deeper into rural networks (as compared to zero additional fiber backhaul being deployed by satellite companies offering high latency service) and that fiber can be used to extend high capacity networks to schools and libraries, then

[28] 47 U.S.C. § 254(b)(3).

[29] *See* Institute for Self Reliance Comments at 1-2. ("We are confident that if the Commission analyzed data in its possession, they would determine that the overwhelming majority of satellite subscribers have no terrestrial option, and settle for satellite rather than choose it.").

[30] 47 U.S.C. § 254(b)(6).

the policy choice is consistent with yet another universal service goal.[31] Accordingly, there are clearly many bases for a rational policy decision for the Commission to more heavily weight high latency service in Phase I of this auction.

Viasat also suggests that changing the weights from the CAF Phase II auction is not permitted because it is an unjustified change in policy.[32] First, it is important to understand that historically satellite providers were not permitted to participate in the program until the CAF Phase II auction, an allowable choice for years after the Commission adopted the principle of competitive neutrality, including the model-based CAF II program. Second, when designing an auction the Commission is well within its authority to establish a design that differs from similar previous auctions. To suggest that changes in auction design from one auction to another are unauthorized policy choices is patently absurd, especially in the context of awarding universal service subsidies through a program in which no provider is forced to participate, much less can have a guaranteed expectation for winning in a competitive process. The Commission has a significant degree of discretion in how it administers its universal service programs, including the mechanisms it uses to award funding. The Commission is well within its authority to make a change to auction weights after seeking comment as it has done in this proceeding.

Further, while the Rural Digital Opportunity Fund "build[s] on" the CAF Phase II auction,[33] it is a new auction unto itself divorced from the Connect America Fund. As the Commission states, "[t]he approach we take today leverages our experience with the CAF program, and the CAF Phase II auction in particular. But it also acknowledges that market

[31] *See Brattle Group Fiber Benefits Study* at 12-13.

[32] Viasat Comments at 17.

[33] Notice at para. 4.

realities have changed since the CAF framework was first established in 2011."[34] In doing so, the Commission is following "the requirement that an agency provide reasoned explanation for its action" and the "demand that it display awareness that it *is* changing position."[35] The Commission, through the Notice, evidences a clear and rational preference for terrestrial service,[36] which is sufficient to justify its change as compared to the CAF II auction, to the extent one auction is even linked to the rules of another.[37] Undoubtedly the Supreme Court has found that the FCC must provide a detailed justification for its change "when, for example, its new policy rests upon factual findings that contradict those which underlay its prior policy; or when its prior policy has engendered serious reliance interests that must be taken into account. It would be arbitrary or capricious to ignore such matters.").[38] In this case, however, to the extent the factual findings have changed, it has clearly explained its reasons for doing so and Viasat cannot argue that it has any reliance interest in an auction for which it is not guaranteed to win anything and in which it is not required to participate. Thus Viasat's arguments about the Commission's adherence to the Administrative Procedures Act can be easily dismissed.

[34] *Id.* at para. 14.

[35] *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

[36] Notice at para. 25 ("To encourage the deployment of higher speed services, and in recognition that terrestrial fixed networks may serve as a backbone for 5G deployments, these proposed weights favor higher-than Baseline speeds and low-latency services").

[37] *See FCC v. Fox Television Stations, Inc.*, 556 U.S. at 515 ("And of course the agency must show that there are good reasons for the new policy. But it need not demonstrate to a court's satisfaction that the reasons for the new policy are *better* than the reasons for the old one; it suffices that the new policy is permissible under the statute, that there are good reasons for it, and that the agency *believes* it to be better, which the conscious change of course adequately indicates.")

[38] *Id.* at 515-16 (internal citations omitted).

II. ALL PARTIES BENEFIT FROM CLEARLY ADDRESSING TRANSITION ROLES AND RESPONSIBILITIES AT THE OUTSET

Many commenters, particularly those with experience as legacy service providers, underscored USTelecom's call for the Commission to develop clear rules related to service obligations and funding mechanisms during the transition from one service provider to the replacement. USTelecom agrees that it is an "important public policy and statutory goal to ensure that those who are connected *stay connected*, and that those rural American consumers and business can continue to access quality broadband at affordable rates on an ongoing basis."[39] The Commission should plan for voice service continuity, and also commit to supporting areas in transition as part of its overall transition deliberations.

A. The Commission Should Plan for Voice Service Continuity and Transitions

Even though Phase I focuses on "unserved" areas, that designation only applies to broadband service and the Phase I proposed buildout milestones similarly apply only to broadband service. In the event a non-price cap carrier prevails in the auction, the Commission should clarify that the non-price cap carrier winning bidder must provide voice throughout its ETC area as soon as it is authorized, which is the same time that the Commission grants the price cap carrier forbearance from the ETC voice obligation.[40] The most straight-forward manner of ensuring continuity of voice service is to make clear now that Rural Digital Opportunity Fund winners must follow the Commission's existing rules for ETCs and "offer the services that are supported by the federal universal service mechanisms . . . either using its own facilities or a combination of its own facilities and resale of another carrier's services "[41] immediately upon

[39] NTCA Comments at 34.

[40] *See* USTelecom Comments at 26-29.

[41] 47 C.F.R. § 54.201(d)-(d)(1). *See also* 47 U.S.C. § 214(e)(1)(A).

receiving funding as the high-cost ETC. Making this obligation clear at the outset allows for businesses to conduct the necessary due diligence in advance of the auction in order to appropriately price their bids if they have to rely on a reseller agreement for some time. This clarity also allows existing voice providers to plan for no longer serving as the supported carrier.[42]

In following this course, the Commission should explicitly reject proposals to require ILECs to remain as the voice provider in areas won by a new provider. For example, the Nebraska Public Service Commission makes clear that it "wants to ensure that the [incumbent] carrier still has an obligation to provide voice service as the carrier of last resort" because of the historical support the state has given to ILECs.[43] It queries, "because there is no requirement that the auction award recipient serve everyone in their territory—only 95 percent—what happens for the consumer that is not being served by the new provider when the incumbent is relieved of the voice obligation?"[44] The answer to this question cannot be forcing the ILEC to remain as the carrier of last resort. This "Hotel California" approach to ILEC regulatory obligations,[45] which Chairman Pai himself has analogized before,[46] is unsustainable under the new paradigm of auction-driven high cost support that the Commission is installing through the Rural Digital

[42] Several commenters called for the Commission to eliminate the requirement for a Rural Digital Opportunity Fund participant to become an Eligible Telecommunications Carrier (ETC). *See, e.g.*, NCTA Comments at 5-7. USTelecom disagrees with this approach, agreeing with Frontier that "[t]he ETC designation process is the states' opportunity to vet auction bidders and their service proposals." Frontier Comments at 13.

[43] Nebraska PSC Comments at 5-6.

[44] *Id.* at 6.

[45] *See* Eagles, *Hotel California*, *on* Hotel California (Asylum Records 1977) ("You can check out any time you like, but you can never leave!").

[46] S*ee Ensuring Customer Premises Equipment Backup Power for Continuity of Communications; Technology Transitions; Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers; et al*, Notice of Proposed Rulemaking and Declaratory Ruling, 29 FCC Rcd 14968 (2014) (Statement of Commissioner Pai, concurring in part and dissenting in part) ("This Hotel California-style regulatory approach condemns carriers to checking out of copper any time they like, but never being able to leave.")

Opportunity Fund. Under the Nebraska PSC's scenario, an ILEC would be required to maintain its entire rural high-cost network, even though there is another federally subsidized provider in place in the exact same area, that is and will for the foreseeable future be receiving federal high-cost universal service support for both voice and broadband (as the current area is considered unserved). This would not be a short-term issue either—the new provider's broadband deployment milestones would not be complete for six years—and the hypothetical five percent that remains unserved would not even be knowable until deployment is complete—and then the ILEC would somehow be responsible for those locations six plus years down the road. A more equitable and sustainable solution is to declare that the new auction winner is responsible for voice services throughout the supported area as soon as it is authorized to receive Rural Digital Opportunity Fund support, as USTelecom proposes, which would also immediately give the states a vested carrier to hold accountable for voice service obligations.[47]

Further, given that the ILEC no longer retains any obligation to serve the supported area once a new ETC is named,[48] the Commission should take steps in this proceeding to streamline the ILEC's exit from the market should the ILEC choose to do so.[49] At a minimum, the Commission should declare that the new high-cost ETC's voice service automatically satisfies the "adequate replacement test" under the Commission's rules governing discontinuance of a

[47] *See also* Tony Clark and Monica Martinez, *The More Things Change, The More Things Need to Change: Why New Rules Realities Require New Rules*, 2 (Sep. 20, 2019) *available at* https://www.ustelecom.org/wp-content/uploads/2019/09/More-Things-Change-Report.pdf. ("[W]hen the ILEC is no longer receiving support and the FCC has sanctioned a new company to serve in its place, the ILEC should be relieved of all federal and state obligations to provide service in such areas. As government provided benefits are eliminated, associated government mandates to provide service must also fall by the wayside."). This report is also attached as Appendix B.

[48] *See* USTelecom Comments at 26-27.

[49] Specifically, the Commission should consider what steps it can take to streamline its section 214(a) discontinuance processes for ILECs that have been replaced and seek to discontinue service, taking into account that a new Commission-approved high-cost ETC is present.

legacy voice service in the context of a technology transition.[50] Under the Commission's rules, a provider seeking to discontinue a wireline TDM-based voice service in the context of a "technology transition"[51] can qualify for the streamlined automatic-grant procedures by making a number of showings that there is an "adequate replacement" in the affected area. These "adequate replacement" showings include providing information regarding the price of the replacement service[52] and showing "based on the totality of the circumstances, that one or more replacement service(s) satisfies" a number of criteria including:

> (1) Offers substantially similar levels of network infrastructure and service quality as the service being discontinued, including performance benchmarks for latency, data loss, service availability, congestion-based voice call failure, and network coverage;
> (2)(i) Complies with regulations regarding the availability and functionality of 911 service for consumers and public safety answering points (PSAPs), specifically §§1.7001 through .7002, 9.5, 12.4, 12.5, 20.18, 20.3, 64.3001 of this chapter;
> (ii) Offers comparably effective protection from network security risks as the service being discontinued; and
> (iii) Complies with regulations governing accessibility, usability, and compatibility requirements for:
> (A) Telecommunications services and functionalities;
> (B) Voicemail and interactive menu functionalities; and
> (C) Advanced communications services, specifically 47 CFR 6.1 through 6.11, 7.1 through 7.11, 14.1 through 14.21, 14.60 through 14.61; and
> (3) Offers interoperability with key applications and functionalities.[53]

All of the criteria required under the "adequate replacement" test should be presumed to have been satisfied by the voice service provided by a high-cost ETC replacing the ILEC under

[50] *See* 47 C.F.R. §§ 63.71(f) & 63.602.

[51] *See id.* at § 63.60(i) ("The term 'technology transition' means any change in service that would result in the replacement of a wireline TDM-based voice service with a service using a different technology or medium for transmission to the end user, whether Internet Protocol (IP), wireless, or another type; except that retirement of copper, as defined in §51.332(a) of this chapter, that does not result in a discontinuance, reduction, or impairment of service requiring Commission authorization pursuant to this part shall not constitute a 'technology transition' for purposes of this part.").

[52] *Id.* at § 63.602(a)(3) ("Information regarding the price of the service for which discontinuance authority is sought and the price of the proposed replacement service.").

[53] *Id.* at § 63.602(b).

the Rural Digital Opportunity Fund. The Commission proposes that as a deployment obligation, "like all high-cost ETCs, Rural Digital Opportunity Fund support recipients would be required to offer standalone voice service and offer voice and broadband services at rates that are reasonably comparable to rates offered in urban areas."[54] Accordingly, the discontinuance pricing test is met due to the reasonable comparability requirements. The Commission should now also confirm that the voice service quality offered by a Rural Digital Opportunity Fund winner (including satellite offerings that meet the Commission's requirement of receiving a Mean Opinion Score of 4 or higher)[55] satisfies the conditions of Section 63.602(b) of its rules.[56] Therefore, a price cap ILEC seeking to discontinue service as part of a technology transition should be able to satisfy the "adequate replacement" test simply by certifying that it has been replaced in the relevant area by a new high-cost ETC under the Rural Digital Opportunity Fund and would be fully entitled to the streamlined automatic grant procedures pursuant to 47 C.F.R. § 63.71(f).

B. The Commission Should Commit to Supporting Areas in Transition

There are a number of other transition issues raised in the record but the solution to all of them is fundamentally the same: where the Commission is interested in the ILEC staying and retaining its service obligation, the Commission should fund that obligation appropriately. This starts with fully funding the ILECs' seventh year and there is widespread agreement that it is

[54] Notice at para. 23 (citations omitted).

[55] *Id*.

[56] In adopting the adequate replacement test for streamlined processing, the Commission made clear that a third-party service would qualify an ILEC for streamlined processing. *See Technology Transitions*, Declaratory Ruling, Second Report and Order, and Order on Reconsideration, 31 FCC Rcd 8283 ¶ 84 (2016) ("Indeed, third party services have always been eligible for consideration under the 214 discontinuance process as potential adequate replacements. The question is whether an adequate replacement exists in the service area, not who provides the service that provides that adequate replacement.").

necessary to do so. USTelecom agrees with ACA Connects that there will likely be a time gap between the CAF II Model program and start of the Rural Digital Opportunity Fund.[57] USTelecom also agrees with ACA Connect that "[t]he Commission therefore should allow all price cap carriers that accepted model-based support to elect an additional year of CAF Phase II funding in 2021 in exchange for meeting their existing public interest obligations. This approach will allow consumers to continue to receive supported services while competitive bidding for RDOF funding occurs."[58] This view of the necessity and equity of providing a seventh year of support is widely favored throughout the record to ensure service continuity.[59]

NTCA raises the potential issue of further gaps between the end of the CAF II Model program and the Rural Digital Opportunity Fund, presumably beyond the seventh year (2021) of support. It notes the concern that "[i]f support is withdrawn from the price cap carrier arbitrarily before a new operator starts to receive support in the area in question, the price cap carrier may be unable to sustain operations in that area . . ."[60] Accordingly it recommends "continu[ing] model support for the price cap carrier pending the initiation of new support to a RDOF auction winner for the same area."[61] USTelecom agrees, because this is completely in line with the principle of providing support for high-cost obligations where the Commission wishes the price

[57] ACA Connects Comments at 27 ("While ACA Connects urges the Commission to move forward with the RDOF Phase I auction next year, it is unlikely that the Commission will be able to complete the RDOF Phase II auction before the CAF Phase II model-based support term ends in 2020. Accordingly, the Commission may not know which price cap carriers will be eligible for the additional year of CAF Phase II transitional funding until after such funding runs out.").

[58] *Id.* at 27.

[59] *See, e.g.*, Comments of Muscogee (Creek) Nation ("The Nation believes that all recipients should have the option to apply for 7th year support following strict guidelines for continued support as determined by the Commission. . . . The Nation finds that a full year would be the most appropriate . . ."); *see also* ITTA Comments at 28-29; Windstream Comments at 24.

[60] NTCA Comments at 34-35.

[61] *Id.* at 34.

cap ILEC to continue fulfilling its duty.[62] If the Commission expects ILECs to continue providing service in areas in transition to a different Rural Digital Opportunity Fund winner, the Commission must continue to provide funding until the new provider has deployed service.

NTCA also raises the issue of whether CAF Phase II Model locations already upgraded to 25/3 Mbps because the CAF II service provider exceeded expectations should receive continued support moving forward. NTCA observes that "[t]hese areas will be ineligible for the RDOF because they already receive 25/3 Mbps broadband—but they are areas where the incumbent may nonetheless be unable to sustain operations without ongoing support."[63] USTelecom agrees with NTCA that the Commission must consider "what level of ongoing support could be necessary in those areas that are 'built out,' to allow for reasonable maintenance and to ensure that rates remain affordable for the consumers in these areas."[64] At a minimum, however, the Commission should not strand locations already upgraded to 25/3 Mbps as part of the CAF Phase II Model program and should allow price cap carriers to bid to upgrade those locations, along with the rest of the census block group, to the extent that the price cap provider bids to provide an above baseline or gigabit tier in that area.[65]

III. THE COMMISSION SHOULD RETHINK ITS APPROACH TO INCENT BIDDERS WITH A DEMONSTRATED HISTORY OF SUCCESS TO PARTICIPATE IN THE AUCTION

The Commission proposes to build in several elements of accountability into the Rural Digital Opportunity Fund that, while well intentioned, are either inefficient, impractical, or do

[62] Other commenters point out additional scenarios where there may be a gap between having a newly-appointed service provider ready to perform its duties. *See, e.g.,* ITTA Comments at 31-32. In all such cases, the Commission should reiterate its commitment to fully funding obligations and avoiding flash cuts.

[63] NTCA Comments at 35.

[64] *Id.*

[65] *See* USTelecom Comments at 41-42.

not provide the types of guarantees and accountability that the Commission seeks. In order to maximize both participation and accountability from qualified bidders, USTelecom recommends the following changes to the letter of credit requirement, subscribership metric proposal, and short form application process based upon its experience and review of the record.

A. The Commission Should Scale Back or Eliminate its Letter of Credit System

It is clear from the record that the Commission's proposal for Rural Digital Opportunity Fund participants to obtain a letter of credit (LOC)[66] is viewed as a substantial barrier to participation in the auction. Potential participants describe the LOC as "a massive waste of limited USF funds"[67] that "are very expensive to obtain" and result in "fees paid to banks account[ing] for a sizeable chunk of . . . funds which could be used for broadband deployment."[68] Further, due to its effect on a participant's credit, the LOC "may hinder a provider from securing additional types of funding to procure equipment and other network essentials . . . [because] a provider may either be required to use a large percentage of their initial CAF funds as collateral against the LOC or may be required to agree to far reaching UCC liens that affect the provider's ability to borrow additional funds."[69] The problems described with the LOC are echoed by other potential participants throughout the record, some of which see it as a gating factor for participation by smaller carriers,[70] though USTelecom's members affirm that the issues with the LOC affect small and large carriers alike.[71]

[66] Notice at paras. 84-89.

[67] CenturyLink Comments at 10.

[68] Geolinks Comments at 9.

[69] *Id.* at 10-11. *See also* WISPA Comments at 34.

[70] *See, e.g.*, INCOMPAS Comments at 13; The Internet Society Comments at 4-5; WISPA Comments at 34.

[71] *See* Windstream Comments at 18.

USTelecom recognizes that the Commission seeks to ensure accountability and the LOC provides an easy way of reclaiming money from a recipient, but we agree that the Commission "considered the benefits of each instrument and it never considered the relative costs."[72] There are several proposals for how to eliminate or lessen the burden of the LOCs, and each is worthy of Commission exploration. Windstream presents the concept of putting funds in escrow to assure performance, similar to the spectrum auctions,[73] a concept that USTelecom also raised in its comments.[74] WISPA presents a detailed proposal to rely on performance bonds, which are significantly less expensive than the LOC and can provide the Commission with a similar amount of security in its investment. USTelecom recommends the Commission consider how this alternative approach would meet its needs while reducing burdens on participants. If the Commission is unwilling to consider an alternative to the LOC, WISPA and CenturyLink both present means of at least reducing the burdens of the LOC based upon performance, which makes sense because the risk of default is reduced significantly as the network is deployed.[75] Given the $20.4 billion size of the Rural Digital Opportunity Fund, the LOC concept used in previous smaller auctions does not scale with it. Without substantial revisions, the LOC may serve as a gating concept for small and large carriers alike, ultimately creating a less efficient auction that delivers less broadband to rural America. USTelecom urges the Commission to adopt an alternative approach that, when paired with its substantial existing enforcement penalties, provides adequate levels of accountability but with a better use of scarce funding.

[72] CenturyLink Comments at 10.

[73] Windstream Comments at 19.

[74] USTelecom Comments at 46.

[75] CenturyLink Comments at 15-16; WISPA Comments at 39-41.

B. The Proposed Subscribership Metric is Unworkable

The record demonstrates that the Commission's proposal to require a 70 percent subscribership metric as a program requirement is not feasible. Most commenters agreed with USTelecom that the requirement was wholly unnecessary, but even those that adopted the general concept of the subscribership metric agreed that a 70 percent subscribership metric is unachievable.

The California Emerging Technology Fund, which has extensive experience with rural broadband deployment programs, has concerns that such a metric "may discourage prospective providers from bidding" because its experience is that "just because you build it, does not mean that subscribers will come."[76] CETF notes that rural areas suffer from affordability issues, not just availability issues, so it proposes instead to either require participants to "offer low income offers to unconnected and under-connected households; and/or market these offers throughout the entire service area with special emphasis to low-income or vulnerable communities."[77] USTelecom agrees with CETF that affordability can be a factor in low-income rural broadband adoption, but it does not agree with CETF's proposed solutions. While the concept of tailored marketing of service availability may be workable, as this is an extension of current ETC requirements, USTelecom does not support using high-cost programs to achieve Lifeline-like results. The high cost and Lifeline programs are separate so that each program can be carefully designed to meet their respective goals; it would not be appropriate or effective to try to address subscribership among people who have low-incomes in the high-cost, availability-focused

[76] CETF Comments at 13-14.

[77] *Id*. at 14-15.

program.[78] To the extent the Commission pursued such an approach in this auction, which it should not, all details regarding the required offer and its application would need to be clear so that auction participants could factor the costs of subsidizing low-income service into their bids. Still, CETF's macro point that a subscribership metric is unworkable and serves as a disincentive to participation remains correct and supported by numerous other parties.[79]

Some parties instead advocate for a reduced subscribership metric but none of these metrics comport with the Commission's own data about subscribership in rural America. For example, Buckeye Hills Regional Council, recognizing that the "70 percent subscribership assumption is overly aggressive in Appalachian Ohio due to a combination of low household income and competition from existing, albeit less capable, broadband solutions," proposes a subscribership target of 16 percent in year three, increasing to 40 percent by year six.[80] While certainly more reasonable than a 70 percent target, USTelecom has already explained that the actual take rates in rural America are very low at the 25/3 baseline tier (23.1 percent to 57.7 percent in rural counties), and "plummet for 100/20 Mbps: the take rate is just over 10 percent in the most rural counties and increases to only 25 percent in the least rural counties."[81] USTelecom agrees with ITTA that "providers have every incentive to attract subscribers,"[82] but those incentives cannot overcome larger broadband adoption forces at work in rural America. The Commission should abandon its subscribership metric proposal.

[78] *See* WISPA Comments at 10 ("By statute, the Commission's mandate is to use high-cost support to fund 'access,' meaning deployment, not adoption.").

[79] *See, e.g.*, USCellular Comments at 9; NCTA Comments at 7-8; WTA Comments at 21.

[80] Buckeye Hills Regional Council Comments at 13; *see also* Utilities Telecom Council Comments at 11.

[81] USTelecom Comments at 37-38.

[82] ITTA Comments at 24.

C. The Commission Should Provide Greater Scrutiny of Project Viability and Learn from its Auction Experience

Ensuring that a participant's bid is technologically and financially viable at the outset of the program is perhaps the soundest way to promote compliance with the Commission's rules and ensure the program's goals are met. In the CAF II Auction Program, 13 out of 103 winning bidders defaulted during the long form stage before funds were even authorized; a more careful selection process will help to weed out applicants and proposals that were never viable in the first place.[83] Accordingly, the Commission should reject calls to relax even basic requirements like having provided service for two years or independently audited financial statements.[84] Broadband deployment is difficult anywhere and some of the world's most capitalized companies cannot make it work,[85] but particularly so in rural areas.[86] To preserve scarce broadband funds and to ensure that the broadband actually gets deployed to rural America, the Commission should consider tightening—not relaxing—its requirements.

---

[83] Windstream Comments at 18-19. Reasons for default include that "it believed that it was not in its best interest to move forward with the auction process, because, among other things it was not in its economic interest." *MGW Networks, LLC, Applicant for Phase II Connect America Fund*, Notice of Apparent Liability for Forfeiture, DA 19-951 (EB Oct. 11, 2019); failure to obtain ETC status, *LTD Broadband LLC, Applicant for Phase II Connect America Fund*, Notice of Apparent Liability for Forfeiture, DA 19-950 (EB Oct. 11, 2019) or no explanation at all, *Johnson Telephone Company, Applicant for Phase II Connect America Fund*, Notice of Apparent Liability for Forfeiture, DA 19-949 (EB Oct. 11, 2019).

[84] Internet Society Comments at 4.

[85] *See* Alfred Miller, *Google Fiber Made 'Tough Decision' to Pull Out of Louisville*, Louisville Courier Journal, Feb. 7, 2019 https://www.courier-journal.com/story/news/2019/02/07/google-fiber-louisville-internet-service-leaving-city/2802763002/.

[86] *See* Travis Kavulla and Frank Lacey, *Financial and Governance Protections for Electric Cooperatives*, R Street Policy Study No. 181 (Sep. 2019) https://www.rstreet.org/wp-content/uploads/2019/09/Final-No.-181.pdf ("Moreover, even those doing business in places that today have no competitive alternatives for broadband service need to consider the economics of making long-lived capital investments when the prospect of competition and technological change loom on the horizon. . . . These risks are among the reasons why Co-Bank, a prominent lender to electric co-ops, has recently urged caution about the business model. Rather than offering a more robust, wired broadband network, Co-Bank suggests that co-ops partner with existing telecommunications companies and using wireless mediums.") (citing *Recent Studies into Successful Broadband Partnerships*, Co-Bank, (Aug. 2019) https://cobank.com/-/media/files/ked/communications/recent-insights-into-successful-broadband-partnerships-jul2019.pdf?la=en&hash=3F07BCB36E21A1A3335F79998DDB3BBC97BD9A90.

USTelecom detailed its concerns about the short form evaluation process in its opening comments,[87] but it was not alone in doing so. NRECA, for example, is interested in ensuring "that only competent, qualified entities utilizing proven technologies participate in both the Phase I and the Phase II auctions," and agrees with USTelecom that "shift[ing] more of the detailed technical and financial showings from the long-form application to the short-form application" is appropriate.[88] Sacred Wind similarly writes that applicants without prior experience should be subject to stricter eligibility criteria and required to submit technical data with their application.[89]

As the Commission is still in the process of authorizing CAF II Auction winners, there is limited public information regarding how the CAF II Auction will ultimately be judged. It is thus difficult to provide detailed comments on the additional rules and protections that could improve the auction structure and ensure the greatest success. With the gift of time, we would be able to tell whether auction winners ultimately met their deployment obligations, and we would be able to see the level of service they ultimately provided. Without that, we can tell that satellite, which already offers service in these areas, won a substantial portion of auction locations, and providers with relatively smaller operations bid for large areas and at speeds in many cases they do not provide today.[90] As noted above, even before funding was authorized, the CAF II Auction Program experienced 13 out of 103 winning bidders defaulting during the long form stage. Given the importance of the success of the Rural Digital Opportunity Fund to the future of fixed rural broadband, the Commission should make as much information available as possible about past auctions in order to provide an open and transparent process and make

[87] USTelecom Comments at 18-20.

[88] NRECA Comments at 12-13.

[89] Sacred Wind Comments at 4.

[90] *See* USTelecom Comments at 19-20.

future auctions as successful as possible. Without greater access to information, it is impossible to fully comment on the CAF II Auction rules and its success.

IV. THE COMMISSION SHOULD RELY ON THE BEST AVAILABLE DATA AND RECOGNIZE LIMITATIONS OF EXISTING DATA FOR BIDDERS

A. There is Widespread Recognition of the Problems with the Available Broadband Mapping Data

Commenters agree that we are heading into the Rural Digital Opportunity Fund using imperfect data sets as an auction base. The Broadband Mapping Initiative's proof of concept pilot, of which USTelecom was a participant, shows: (1) there are potentially 5 million unserved locations in rural census blocks currently reported as served; (2) the location counts assumed per census block under the 2011 data the Commission proposes to use is inaccurate nearly half the time, with nearly a quarter of locations assigned to the wrong census block; and (3) the inherent unreliability of commercial geocoders to pinpoint the broadband serviceable location in rural America.[91] Commenters took substantial note of the problems in broadband mapping as it exists today,[92] and agree that "[i]n order to effectively address the rural digital divide issue, the Commission needs to have accurate and complete information as to where broadband service is and is not available in the United States."[93]

---

[91] USTelecom Comments at 6-7.

[92] *See e.g.*, Nebraska Public Service Commission Comments at 4 ("The recent results from USTelecom's pilot mapping project demonstrate that some areas may have previously been considered as served but in reality lack broadband coverage at 25/3 Mbps."); Frontier Comments at 5 ("As several members of Congress have observed, the allocation of the next major phase of broadband deployment funding is far too important of a decision to make based on outdated or inaccurate data."); ITTA Comments at 3 ("[I]t is imperative that the auction have the benefit of a granular, accurate, and thorough accounting of unserved and underserved locations in eligible areas."); National Association of Counties, National Association of Development Organizations and Rural Community Assistance Partnership at 1 ("[A]ccurate and comprehensive data is the foundation for federal funding decisions and should be prioritized by the Commission."); USCellular Comments at 10 ("[I]t is well established and there is little controversy surrounding the fact that FCC Form 477 data does not portray broadband availability with sufficient accuracy to underpin a fair distribution of universal service support.").

[93] Comments of the Pennsylvania Public Utility Commission, Office of Consumer Advocate/the Office of Small Business Advocate at 3.

While commenters recognize the current mapping data flaws, there are differences of opinion as to what the Commission should do in the interim, recognizing that the Commission is also currently establishing its Digital Opportunity Data Collection to improve broadband mapping, in part to better target broadband support.[94] Some argue for pausing and getting the location data correct before beginning any auction to target high-cost support for broadband deployment.[95] Other commenters support moving forward "without delay" based upon the currently available Form 477 data, coupled with a challenge process.[96]

B. The Commission Should Take Steps Now to Either Improve or Account For Known Data Errors That Will Affect the Auction

The unanimity of the record that broadband mapping is flawed paired with the Commission's express desire to "move expeditiously to commence an auction in 2020,"[97] reinforces the necessity of reducing the risk of inaccurate location counts. Simply put, bidders must know what they are bidding on and be held harmless if the data the Commission provides about the auction proves faulty, in order to reduce uncertainties that threaten to chill auction participation. To accomplish these objectives, the Commission should develop a Broadband Serviceable Location Fabric (Fabric) prior to the auction, at least, for the rural areas to be

[94] *Establishing the Digital Opportunity Data Collection*, WC Docket Nos. 19-195, 11-10, Report and Order and Second Further Notice of Proposed Rulemaking, FCC 19-79, at para 1 (rel. Aug. 6, 2019) (Digital Opportunity Data Collection).

[95] *See, e.g.*, California Public Utilities Commission Comments at 3; National Association of Counties/National Association of Development Organizations/Rural Community Assistance Partnership Comments at 1; USCellular Comments at 11.

[96] ACA Connects Comments at 20.

[97] Notice at para. 3.

auctioned[98] and eliminate the penalties that come with returning funding if location counts are deemed insufficient.

In the parallel Digital Opportunity Data Collection docket, commenters have agreed upon the utility of creating a Broadband Serviceable Location Fabric. Microsoft, for example, recommends that the Commission "implement[] a broadband fabric and lookup tool so that all stakeholders have a common view of broadband serviceable locations."[99] WISPA observed that the Broadband Mapping Initiative "demonstrated the benefits of the broadband-serviceable location fabric as the solution to the lack of granularity and accuracy inherent in the current reporting regime."[100] Accordingly, in the Rural Digital Opportunity Fund context, WISPA concludes that "[i]n an ideal environment, the fabric would be the mapping tool on which the Commission would rely to set the number of 'locations' in a census block . . . and to determine the physical location of the 'locations' within that area."[101] There is broad support for implementing the Fabric to identify broadband serviceable locations with accurate geocoding, and USTelecom believes (after consulting with the vendor that conducted the pilot) that this more targeted Fabric, which would improve location accuracy for just the unserved census blocks to be auctioned in Phase I of the Rural Digital Opportunity Fund, can be done in 5-8 months.[102] Accordingly, the Commission would be well advised to proceed now to develop the Fabric in time for the Rural Digital Opportunity Fund.[103] Doing so would allow *all bidders* to

[98] *See* USTelecom Comments at 6 (describing the Broadband Serviceable Location Fabric as a means of identifying and precisely locating virtually every structure in a geographic area capable of receiving broadband service).

[99] Digital Opportunity Data Collection Reply of Microsoft WC Docket No. 19-195 (filed Oct. 7, 2019).

[100] Digital Opportunity Data Collection Reply of WISPA, WC Docket No. 19-195 (filed Oct. 7, 2019).

[101] WISPA Comments at 17.

[102] USTelecom Comments at 11.

[103] We note that this targeted Fabric is distinguishable from the broadband reporting element of the Digital Opportunity Data Collection which requires a Fabric that covers the entire nation. Because the census blocks at issue for the Commission's proposed Phase I are "unserved" at 25/3 by any provider, the timing considerations of a

have a more accurate location count and precise geolocations for the serviceable structures, "enabl[ing] them to develop and rely on a more accurate business case and network plan to support their bidding strategy."[104]

Even if the Commission does not develop a Fabric in advance of the Phase I auction, then there is agreement that it would be both practical and equitable to reduce bidders' risk of bad location data—a known problem—by holding providers harmless for the Commission's inaccurate location counts.[105] ITTA agrees, stating "[i]f the Commission uses the CAM to determine deployment obligations, it must hold winning bidders harmless for any discrepancies that ensue between model-determined locations and actual locations."[106] While this would be a change from the Connect America Fund (CAF) Phase II Auction, it is warranted due to the difference in scope between that auction and the proposed Rural Digital Opportunity Fund.

The concern is not merely hypothetical as at least one CAF Phase II Auction winning bidder has now defaulted on its obligations due to faulty location counts. The winner stated that "because [it] was unable to find any unserved locations after investigating the [Census Block Groups] won in Arkansas, it did not make economic sense to continue with post-auction requirements."[107] The winner also noted that "there was no mechanism for winning bidders to

nationwide Fabric and broadband mapping and reporting exercise, which USTelecom has projected will take 12-15 months, are not applicable here and should not affect the timing of the auction.

[104] USTelecom Comments at 11.

[105] Windstream Comments at 2. ("In the CAF II auction, if the Commission's location count was high, a winning bidder had to give money back on a pro-rata basis, upending their expectations and putting the viability of their deployments at risk. On the other hand, if the Commission's location count was low, potential broadband consumers may have been 'left out in the cold'' without service.").

[106] ITTA Comments at 11. *See also* WISPA Comments at 18 (arguing that a post-auction location true-up is inefficient and creates numerous problems with respect to determining the physical location of serviceable structures).

[107] *Fidelity Communications Company, Applicant for Phase II Connect America Fund*, Notice of Apparent Liability for Forfeiture, DA 19-947 (EB Oct. 11, 2019) at para. 7.

challenge the lack of unserved locations until after filing the Long-Form Applications."[108] And this default was for an area covering ***10 locations***! As Windstream articulates, "[i]t is unrealistic to expect that bidders in an auction of 3.9 million locations can conduct and complete the extensive due diligence required to determine how many locations are *actually* in a census block in the limited time available."[109] To be sure, this problem could be mitigated by developing a Fabric. Nonetheless, placing all of the risk for bad location data that is nearly a decade old on potential bidders has the potential to drive down overall participation, which ultimately increases the costs of service and therefore provides broadband to fewer rural Americans.

V. THE AUCTION DESIGN CAN BE IMPROVED FOR EFFICIENCY AND TO BETTER PROMOTE THE COMMISSION'S GOALS

A. The Auction Mechanics Can Be Refined to Improve Fairness and Efficiency

The Commission proposes to conduct its auction in the same manner that it used to conduct the CAF Phase II Auction, but the Notice does not present an analysis of how the bidding process went or how it could be improved. In order to add additional rigor to the study of the auction design already in the record,[110] USTelecom asked Economics Incorporated to analyze the CAF Phase II Auction and provide suggestions for how it could be improved. As a result, Economics Incorporated provides comment on the following auction design aspects with the goal of making incremental improvements to the auction process:

- Using the CAF Phase II Auction bidding data to update the reserve prices;
- Freezing the price clocks for uncontested areas after the budget clears to facilitate package bidding and the relevant cost synergies;
- Modifying the information rule to avoid switching bids that are only intended to gather information on the level competition and hurt competition discovery;

[108] *Id.* at para. 7.

[109] Windstream Comments at 2.

[110] Viasat Comments at Exhibit A, Dr. Paul Milgrom and Dr. Ilya Segal, "Lessons from the CAF II Auction for the RDOF Auction" (Sep. 20, 2019).

- Reducing location uncertainty and its negative effects on efficiency and fairness; and
- Using the CAF Phase II Auction performance weights and the proposed high-latency weight to avoid paying for areas that do not increase network infrastructure or availability.

The results are attached as Appendix A and incorporated by reference into these reply comments.[111]

B. The Commission Should Add an Intermediate Speed Tier to Add Additional Competition

The Commission should consider adding, as Sacred Wind suggests, an Intermediate Tier to its auction design for those that can offer 50/6 Mbps in order to offer an additional opportunity to advance broadband speeds in rural America where 100 Mbps is not feasible.[112] USTelecom agrees with Sacred Wind that fiber deployments required to provide gigabit or Above Baseline speeds may be prohibitively expensive in certain areas but providers could use other technologies "capable of providing broadband services well in excess of 25/3 Mbps and should be able to submit bids at an appropriately higher performance tier."[113] Including this tier is sound public policy because it presents an additional entry point for rural broadband that exceeds today's definition of broadband, thus offering a more future-forward tier, but at a likely lower cost than the Above Baseline tier, which could possibly encourage more bidding and therefore a more efficient auction. Given that the CAF Phase II Auction offered four tiers of service, USTelecom does not anticipate that adding this additional tier would cause undue complications to the bidding process.

---

[111] James Bono, Allan T. Ingraham, *et al*., *Comments on the Design of the Rural Digital Opportunities Fund Phase I Auction*, Economists Incorporated (Oct. 21, 2019) *available at* https://www.ustelecom.org/wp-content/uploads/2019/10/Comments-on-the-Design-of-the-RDOF-Phase-I-Auction.pdf. This document is also attached as Appendix C.

[112] Sacred Wind Comments at 6.

[113] *Id*. Sacred Wind specifically writes of the technological capabilities of fixed wireless but USTelecom would open this tier to all low-latency technologies.

C. The Commission Should Avoid Providing Duplicative Broadband Deployment Support

The Rural Digital Opportunity Fund represents an unprecedented opportunity to deploy next generation broadband to communities and locations that may otherwise not receive it. The corollary to this is that the Commission should not waste scarce dollars funding areas that are either already built out, or for which there were plans to invest private capital on an unsubsidized basis to deploy broadband in an area.

The Commission has already largely addressed the issue of overbuilding in Phase I by focusing on census blocks that are reported as unserved via the FCC's Form 477; if providers are serving an area they should have reported it. Numerous commenters call for a challenge process and USTelecom agrees that a limited challenge process may be advisable to discover any new builds between the last FCC Form 477 reporting period.[114] This challenge process should inherently be limited in scope because there would only have been a short amount of time between the most recent reporting period and the current state of deployment. The Commission should not entertain a "reverse challenge process" that would allow for challenging whether a provider claiming to provide 25/3 service actually does.[115] While USTelecom has advocated for a single auction based upon a complete map of broadband availability, the Commission is proposing to proceed to auction in order to move rapidly for known unserved areas. Accordingly, USTelecom believes that "reverse challenge processes" should be condensed into the process associated with the Digital Opportunity Data Collection and reflected in Phase II of the Rural Digital Opportunity Fund, which should allow for more targeted broadband funding in the future.

[114] *See e.g.*, NCTA Comments at 5; Utilities Technology Council Comments at 14; WISPA Comments at 28.

[115] *See e.g.*, Buckeye Hills Regional Council Comments at 15; NRECA Comments at 5.

Consistent with Verizon's comments, USTelecom also agrees that the Commission should not allow providers to use the Rural Digital Opportunity Fund support in order to fulfill independently made merger and regulatory commitments due to the inefficiencies it would create.[116] This proposal is consistent with previous Commission precedent in other broadband deployment programs[117] and also serves to better target scarce resources to commitments that were previously made without a guarantee of support.

VI. CONCLUSION

USTelecom members appreciate how great of an opportunity the Rural Digital Opportunity Fund can be to deploy broadband service in rural America. As described, USTelecom requests that the Commission adopt the proposals contained herein in order to effectively and efficiently target scarce broadband funding.

Respectfully submitted,

USTelecom—The Broadband Association

By: _____

Michael Saperstein
601 New Jersey Avenue, N.W.
Suite 600
Washington, D.C. 20001
(202) 326-7225

October 21, 2019

[116] Verizon Comments at 8.

[117] *See, e.g., CAF/ICC Order* at para. 146 ("CAF Phase I incremental support will not be used to satisfy any merger commitment or similar regulatory obligation.").