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**

REPLY COMMENTS OF THE NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION

By: Brian M. O'Hara
Senior Director Regulatory Issues
National Rural Electric Cooperative Association
4301 Wilson Blvd.
Arlington, VA 22203
703-907-5798
brian.ohara@nreca.coop

Of Counsel:

C. Douglas Jarrett
Kathleen Slattery Thompson
Keller and Heckman LLP
1001 G Street NW, Suite 500 West
Washington, DC 20001
202.434.4180
jarrett@khlaw.com

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EXECUTIVE SUMMARY

Many parties advance concepts and positions consistent with the views expressed in NRECA's Comments. By far, the prevailing view is that the Commission should move forward with the Phase I auction. Improved broadband availability data that is the object of the *Digital Opportunity Data Collection Order and FNPRM* will underlie the design of the Phase II auction.

Parties broadly support the Commission's premise that the Phase I auction should move forward to provide support to deploy networks in areas lacking 25/3 Mbps and voice service. Other parties joined NRECA in supporting the Commission's proposal that unserved locations in price cap areas receiving model support in which the price cap ILEC is the only provider offering 25/3 Mbps should be included in the auction. There is also support for a streamlined process to challenge service providers' reports describing areas or locations as served, based on the first-hand knowledge of interested local parties. NRECA members have found this to be the case all too often.

As NRECA, a number of parties propose to widen the points between highest and lowest performance tiers and to lower the threshold for the high latency threshold as satellite providers should readily achieve latency of ≤ 600 milliseconds or lower. To ensure RDOF support is focused on building sustainable, robust networks, Verizon recommends that satellite-based Internet providers not be eligible for the Phase I auction. To further the same policy, several forward-looking proposals are advanced: delete the baseline tier as 25/3 Mbps is "on the verge of obsolescence even today" in urban areas; and, similar to NRECA's Comments, Conexon proposes adjustments to the bidding assignment rules to award support to the bid having the lowest weight T&L combination even if a more heavily weighted T&L combination is bid at a lower percentage. As noted by NRECA, this approach will ensure a greater percentage of the overall funding is both awarded and made available to the persons looking to deploy the most sustainable terrestrial networks.

There is also record support for requiring more detailed technical and financial showings in the short-form application to reduce the likelihood of unqualified bidders obtaining limited RDOF funds. In response to concerns regarding the burden of the LOC, NRECA offers several proposals including freezing the aggregate amount of the LOC if the award recipient meets the three-year buildout milestone and continues to meet milestone requirements in years four through six. In meeting these milestones, an award recipient demonstrates that it is progressing with the buildout and providing service, reducing the risk of a default triggering a draw on the LOC. The reduced risk should be reflected in a capped LOC.

Forbearance from requiring winning bidders to become ETCs is not warranted. Only ETCs may be awarded USF support under the Act and forbearance is almost universally associated with presence of robust competition. In areas in which RDOF support may be assigned, there is neither competition nor broadband service at or above the fixed broadband benchmark. NRECA members embrace the opportunity to provide voice-only service, even though a majority of customers subscribe to broadband services, because a voice-only subscriber contributes revenue and will more likely than not become a broadband subscriber in time.

TABLE OF CONTENTS

Page No.

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The National Rural Electric Cooperative Association ("NRECA") hereby submits its Reply Comments in response to the Notice of Proposed Rulemaking ("NPRM") in the above referenced proceeding,[1] looking to establish Rural Development Opportunity Fund ("RDOF"). NRECA filed Comments on September 20, 2019.

INTRODUCTION

In its Comments NRECA endorsed the Commission's proposal to distribute the $20.4 billion fund to bridge the digital divide through a Phase 1 $16.0 billion reverse auction and a Phase II reverse auction with a budget of at least $4.4 billion. As the Commission observes in the NPRM, the best course of action is to conduct the Phase 1 auction to distribute support to provide broadband and voice services to known unserved or underserved locations and to conduct the Phase II auction after the Commission obtains more granular data on served and unserved locations. NRECA strongly supported the proposed categories of served and

[1] *In the Matter of Rural Digital Opportunity Fund,* Notice of Proposed Rulemaking, WC Docket Nos. 19-126, 10-90, released August 2, 2019 ("*NPRM*"). 84 Fed. Reg. 43543, August 21, 2019.

underserved areas that would be eligible for the auction, including the unserved locations in areas where a price cap ILEC is the only provider offering 25/3 Mbps broadband and voice services in the census block. Consistent with the Commission's strong preference to "make the necessary long-term investments to build robust, future-proof networks" in rural areas, NRECA offered two core proposals:

1. The proposed performance tiers and latency (T&L) combinations in the NPRM should be expanded slightly, adding a symmetrical 100/100 Mbps tier between the Gigabit tier and the Above Baseline tier. The latency weights should be expanded, establishing a new an ultra-low latency measure (≤ 50 ms) that would be assigned a "0" weight, assigning a "25" weight for the proposed low latency measure (≤ 100 ms), and lowering the high latency value to ≤ 600 ms.
2. In the $16.0 billion Phase 1 auction, the bidder having the lowest weight T&L combination below the clearing price point in the clearing round or below the previous round's base clock percentage in subsequent rounds should be awarded support. The lowest weight T&L combination bid would be awarded support in the round even if a bid for a higher weight T&L combination is made at the same or at a lower bid percentage.

Many interested parties supported these concepts, or similar proposals, reflecting a strong consensus for finalizing rules for the Phase I auction to maximize the deployment of scalable, sustainable terrestrial networks capable of meeting the evolving broadband requirements of unserved areas within the United States through 2030.

DISCUSSION

1. The Commission Should Reject Arguments to Delay the Phase I Auction Pending Development of Improved Broadband Reporting and Mapping Procedures

USTelecom proposes the Commission defer the Phase 1 auction until better data derived from improved broadband reporting and mapping procedures are available.[2] There is little dispute that there is ample room for improvement in broadband reporting, as NRECA and multiple parties have noted in filings submitted to the Commission and the National Telecommunications Information Administration. NRECA supports moving forward with improvements to broadband reporting and mapping.[3] However, there is little support for delaying the Phase I auction as suggested by USTelecom. Multiple parties joined with NRECA in support of the Commission's proposal to move forward with the Phase I auction to bridge the digital divide for many communities at the earliest possible time.[4] One party suggested the auction be deferred until a series of proceedings related to the definition and determination of unserved locations are resolved.[5] This approach poses the potential for substantial delay in initiating the

[2] Comments of USTelecom-The Broadband Association, WC Docket Nos. 19-126, 10-90 (filed Sep. 20, 2019) (USTelecom Comments), at p. 9 (stating: "The best way to meet [the goals of the RDOF] is to ensure that [it] is designed to leverage the exponentially better information about rural broadband service availability that the Digital Opportunity Data Collection proceeding is on track to produce, with a combination of the Fabric and more granular shapefile reporting.").
[3] *See generally* Comments of NRECA, *Digital Opportunity Data Collection*, Report and Order and Second Further Notice of Proposed Rulemaking, WC Docket Nos. 19-195 and 10-90. FCC 19-79 ("*Digital Opportunity Data Collection Order and FNPRM*"), (filed Sep. 20, 2019) (NRECA Comments), p. 3-6.
[4] Comments of ACA Connects, WC Docket Nos. 19-126, 10-90 (filed Sep. 20, 2019) (ACA Connects Comments), at p.20 (stating: "even with the more granular broadband deployment data collection proposals currently on the table, it will be difficult to ensure the information accurately reflects all served and unserved locations"); *See also*, Comments of NTCA-The Rural Broadband Association Comments (filed Sep. 20, 2019) (NTCA Comments), p. 37, and Comments of United Technologies Council (filed Sep. 20, 2019) (Comments of UTC), pp. 13-15.
[5] *See* Comments of the Wireless Internet Service Providers Association WC Docket Nos. 19-126, 10-90 (filed Sep. 20, 2019) (WISPA Comments), pp. 16-18.

Phase I auction that is unwarranted in light of the Commission's proposal that for the Phase II auction for which the Commission will have the benefit of more granular date per the outcome of the *Digital Opportunity Data Collection Order and FNPRM* and will focus on meeting the requirements of *unserved locations*. Current data shortcomings result in an over reporting of broadband deployment and availability. As a result, there is good confidence that areas currently reported as unserved or underserved, and thus eligible in Phase I, are truly unserved or underserved. If subsequent data collection improvements identify additional underserved locations these can be addressed in Phase II.

2. Parties Support a Widening of the Weights Between the Gigabit Tier and the Lower Tiers

As noted above, NRECA proposed that bidding weights for higher T&L combinations be increased to maximize the opportunity for largely future-proof, fiber-based networks to secure winning bids in the RDOF Phase I auction. Several parties supported this approach. ACA Connects explained that their analysis of the bidding weights adopted for the CAF II auction resulted in a disproportionate amount of support going to the lower tier service providers as wireless carriers' cost of deployment is substantially lower than that of fixed wireline facilities, including fiber-based networks.[6] To "better level the playing field" between more sustainable fixed wireline technologies and wireless networks, ACA proposed changes to the three performance tiers to better reflect the underlying costs of the respective technologies, by increasing the weights assigned to the proposed RDOF Baseline tier to 75 percent and the

[6] *See* ACA Comments, at p. 5.

proposed RDOF Above Baseline tier to 35 percent.[7] This modification of bidding weights is consistent with the underlying Connect America Cost Model (CAM), "which projects the costs of constructing, operating, and maintaining a GPON fiber-to-home network to every census block in the country."[8]

A different approach to weighting is offered by NTCA, recommending that symmetrical broadband service such as 100/100 Mbps or 500/500 Mbps would receive a "Symmetrical Bonus."[9] This approach has merit, although NRECA has reservations that the currently proposed Gigabit tier (Gigabit/500 Mbps) should be weighted more heavily or equally with 500/500 Mbps symmetrical.

NTCA also proposed a reduction in the high latency value to 550 milliseconds,[10] consistent with NRECA's proposal reducing the maximum value to 600 milliseconds. NTCA explains that 550 milliseconds should be the highest acceptable level of latency as this threshold can be satisfied by satellite providers.[11] Verizon takes the direct approach in addressing the latency concerns inherent in satellite-based Internet: exclude satellite-based applicants from the Phase I auction, noting terrestrial based systems are more capable of meeting the increasing demand for low latency applications that will steadily increase over the next decade.[12] This approach makes sense for the Phase I auction. In the future, satellite technology might achieve levels approaching the lower latency levels, comparable to NRECA's proposed ultra-low latency

[7] *Id*., at p. 8.
[8] Comments of Conexon, LLC, WC Docket Nos. 19-126, 10-90 (filed Sep. 20, 2019) (Conexon Comments), at p. 2.
[9] *See* NTCA Comments, pp. 13-16.
[10] Comments of NTCA, at p. 11.
[11] *Id*.
[12] *See* Comments of Verizon, WC Docket Nos. 19-126, 10-90 (filed Sep. 20, 2019) (Verizon Comments), pp.4-5.

or low latency values. As the emerging technology of low earth orbit (LEO) satellites demonstrates through deployed systems and real-world operating experience that lower latency levels can be consistently delivered, LEO-based satellite networks could participate in the Phase II auction.

3. The Commission Should Consider Eliminating the Proposed Baseline Tier and Should Modify the Criteria for Determining Winning Bids to Improve the Likelihood that Sustainable Broadband Technologies Obtain Funding in the Phase I Auction

Several parties propose modifications to the bidding procedures to enhance the likelihood that RDOF Phase I support is awarded to the most sustainable, future-proof networks. Citing the principles in Section 254 (b) of the Communications Act that USF support should be expended to ensure "advanced telecommunications and information services are available in all areas of the country," the Illinois Department of Innovation & Technology recommends the 25/3 Mbps baseline tier be eliminated as 25/3 Mbps "is on the verge of obsolescence even today."[13] Consistent with NRECA's longstanding concern over urban/rural digital divide, Illinois notes that "[g]iven that 100 Mbps broadband is nearly ubiquitous in the nation's urban areas, the Commission should fund no less in rural, insular, and high cost areas." [14] Conexon notes that NCTA reports that Gigabit service is available in 90% of households in urban areas and the Phase I auction should be designed to maximize the likelihood that support is awarded to fiber-based networks to ensure residents in rural areas have comparable broadband services.[15] As these

[13] Comments of the Illinois Department of Innovation & Technology, WC Docket Nos. 19-126, 10-90 (filed Sep. 20, 2019) (Illinois DoIT Comments), at p. 7.
[14] *Id.* at p.5.
[15] *See* Conexon Comments, at p. 7 (citing NCTA Report).

parties point out, awarding 10 years of support to buildout systems delivering data rates that today substantially lag those available in urban areas does not further the public interest.

Along the lines of NRECA's proposal to assign winning bids based on the lowest combination of T&L weights bid in a round for an area, Verizon proposes a modification to assigning winning bids if high latency satellite service applicants are allowed to participate in the auction. In contested areas between bidders offering low and high latency bids, the low latency bidder should be given an absolute preference after the clearing round.[16] Conexon offers a similar approach, premised on consumer preferences for higher speed broadband service and consistent with the budgetary constraints of the Phase 1 auction: After the clearing round, bidding between performance tiers would cease, bids would be awarded in each area to the bidder proposing the highest performance tier and lowest weight. [17] As Conexon observes, "the Commission's objective of the auction [should be] to determine which services should be subsidized within the budget, not the at the least available cost." [18] As NRECA explained in its Comments, this approach would maximize the benefits of the reverse auction: inter-area competition would drive the aggregate reserve price to the budget and meaningful intra-area competition among applicants having the same T&L combination would be maintained.[19] Most importantly, a greater percentage of the available support for the Phase I auction will be awarded to support networks most capable of meeting rural communities' current and future broadband requirements.

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[16] Verizon Comments, at 6.
[17] Conexon Comments, pp. 5-6.
[18] *Id*., at p. 8.
[19] *See* NRECA Comments, at p. 13.

4. The Eligible Areas for the Phase I Auction Should Be the Core Areas Proposed in the NPRM and A More Robust Challenge Process is Warranted

As NRECA, the Utilities Technology Council endorsed the eligible areas for the Phase 1 auction proposed in the NPRM, plus the unserved locations in areas in which the price cap ILEC is the only terrestrial provider offering 25/3 MHz.[20] As noted in our Comments, all too often NRECA member cooperatives have observed areas reported as "served" per Form 477 reported data, when broadband at 10/1 Mbps or 25/3 Mbps is either not available or available only to a handful locations within an area.[21] Other parties suggested different approaches, principally limiting eligibility to areas having no existing service based on existing Form 477 data.[22] NRECA believes the availability of and reliance upon the price cap ILEC HUBB data provides a reasonable basis for including these partially served areas. NRECA opposes prioritizing areas based on whether the areas received model-based support or not,[23], though it appreciates the underlying motivation. In our view, areas and locations lacking robust broadband service, such as those obtaining 10/1 Mbps service under model-based support, on a going forward basis are for all intents and purposes similarly situated with areas and locations currently without any broadband service.

NTCA and others echoed NRECA's position that a robust challenge process should be available to verify that areas reported as served are in fact served. As NTCA observes, the proposed validation process is little more than an a process for remedying obvious reporting

[20] *See* UTC Comments, at p. 14.
[21] NRECA Comments, at pp. 4-5.
[22] *See* NTCA Comments, pp. 31-34.,
[23] *See generally* Comments of NCTA -The Internet & Televisions Service Association, WC Docket Nos. 19-126, 10-90 (filed Sep. 20, 2019) (NCTA Comments), pp. 2-4.

errors and rectifying reported false positives.[24] Similar to NRECA's concept that interested parties should have the opportunity to verify reports of served locations relying on "boots on the ground," assessments by local organizations or interested services providers NTCA proposes a doable, timely challenge process based on "facts on the ground."[25] This approach is clearly in the public interest.

5. More Thorough Vetting of Applicants' Technical and Financial Showings in the Short-Form Application is in the Public Interest

NRECA proposed the Commission require more detailed technical and financial showings in the short-form, noting that persons seriously considering participation in the Phase 1 auction must have made technology plans and have developed financial models to establish the internal business case to participate in the auction, considering potential bidding areas and minimum levels of support upon which entity's bidding strategy would be based.[26] We also noted that inasmuch as the Commission's staff has had the benefit of reviewing and assessing the CAF II applications, appropriate recommendations could be made in a Public Notice regarding the RDOF technical and financial showings.[27] NTCA is in agreement, emphasizing more detailed showings in the short-form applications is warranted so that limited RDOF support is not made available to winning bidders that did not devote the time and appropriate resources to develop strong business plans and noting that post-award revocations of support, at best, idle available funding for areas lacking robust broadband.[28]

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[24] *See* NTCA Comments, pp. 36-39.
[25] *Id*.
[26] *See* NRECA Comments, pp. 12-14.
[27] *Id*., at p. 13.
[28] *See* NTCA Comments, pp. 36-37.

6. The Letter of Credit Obligation Burdens Should Be Lessened in a Measured Manner

NRECA understands that the letter of credit plays a role in ensuring the goals of the RDOF are satisfied by minimizing the risks that winning bidders will not meet the buildout obligations. As NRECA explained, the challenge and cost of obtaining and maintaining a letter of credit that increases annually for six years can be a burdensome cost of doing business.[29] Other parties made a similar point that both the process and the cost of obtaining a letter of credit are unduly burdensome and unnecessary for established service providers.[30] Several intermediate approaches could mitigate the cost of LOCs merit consideration. The first is to re-calibrate the LOC annually, based on the annual certifications and reporting of capex expenditures and locations served.[31] These certifications will demonstrate whether the award recipients are making reasonable progress toward the applicable service milestones. If progress is being made, the LOC would not be increased for the subsequent year. This may require an adjustment to the date on which the LOC for next year may be required.

Another approach is for the LOC to increase annually per the current rules until Year 3 when the initial buildout milestone must be met. If the award recipient achieves this milestone the amount of the LOC does not increase for the next year. The same principle would apply in subsequent years. In achieving the annual milestones beginning in year three, the award recipient is demonstrating that it RDOF's support is being deployed as intended, service is being provided

[29] *See* NRECA Comments, pp. 15-16.
[30] *See e.g*., Comments of @Link Services, LLC, WC Docket Nos. 19-126, 10-90 (filed Sep. 20, 2019) (@Link Comments), pp. 2-5 (describing the challenge of obtaining a letter of credit for the company having over 14,000 current broadband subscribers).
[31] *Connect America Fund et al,* Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd, 5949, 6010-6015 (2016).

consistent with the Commission's requirements, and the risk of loss of funds is declining proportionately. This modified approach could and should be applied to CAF II award recipients.

7. The Obligations to Become an ETC and Provide Voice-Only Services Should be Maintained

NCTA opines that the Commission should forbear from requiring auction winners to become eligible telecommunications carriers (ETCs), emphasizing the focus of the RDOF is providing broadband service.[32] The proposal is at odds with Sections 214 (e) of the Act which obligates service providers to obtain ETC status to be eligible for universal service support and 254 (e) of the Act which limits the distribution of support to ETCs designated under Section 214(e). Apart from these considerations, the proposal is inconsistent with the Commission's forbearance authority under Section 160 of the Act. The exercise of forbearance authority is based in large part on the presence of competition that underlies lifting a statutory obligation. By definition, RDOF support, CAF II support and all high-cost support for that matter are premised on supporting essential services that otherwise are not being provided in the market areas. These are not areas in which competition for fixed telecommunications and broadband services is thriving.

NRECA understands the interest of parties looking to eliminate the voice-only service obligation, notwithstanding the Commission's longstanding requirement premised on a reasonable reading of statutory obligations. NRECA does not support this idea. A small percentage of customers passed by NRECA networks subscribe to voice-only service. Our members view the ability to offer wireline voice service as securing a new customer that, in time, will likely be

[32] *See* NCTA Comments, pp. 5-6.

interested in securing broadband service. Thus, we believe the obligation to provide voice-only service should be retained for award recipients.

8. Commenting Parties Largely Agree that a 70% Customer Subscription Requirement Does Not Further the Public Interest

The vast majority of persons filing comments objected to the 70% subscription requirement. Those that supported the concept of a subscription obligation proposed a much lower number such as 35% as offered by NTCA. [33] The buildout milestones and the obligation to continue to provide service throughout the award recipient's service area for 10 years are the appropriate benchmarks. These are the variables within a services provider's control. Moreover, as noted in our Comments, few if any award recipients can sustain their businesses without extensive marketing efforts to secure as many customers as possible within their service areas.

CONCLUSIONS

Interested parties offered thoughtful recommendations and ideas for advancing the deployment of robust fixed broadband networks, though disagreeing on several points. These disagreements should be resolved in favor of maximizing funding for the deployment of advanced broadband networks capable of meeting the needs of unserved and underserved largely rural communities for the next decade and beyond. Accordingly, NRECA recommends the

[33] NTCA Comments, at p. 29.

Commission move forward with the adoption of rules to implement the Phase I auction consistent with the views expressed herein.

Respectfully submitted,

National Rural Electric Cooperative Association

/s/

By: Brian M. O'Hara
Senior Director Regulatory Issues
National Rural Electric Cooperative Association
4301 Wilson Blvd.
Arlington, VA 22203
703-907-5798
brian.ohara@nreca.coop

Of Counsel:

C. Douglas Jarrett
Kathleen Slattery Thompson
Keller and Heckman LLP
1001 G Street NW, Suite 500 West
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jarrett@khlaw.com

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