

February 17, 2020

Submitted via e-mail

Ms. Evelyn Remaley
Acting Assistant Secretary of Commerce for Communications and Information and
NTIA Administrator
National Telecommunications & Information Administration
U.S. Department of Commerce
1401 Constitution Ave., N.W.
Washington, D.C. 20230

RE: *NTIA Implementation of rules for the \$300 million Broadband Infrastructure Deployment Grant Program enacted on December 27, 2020 as part of the Consolidated Appropriations Act of 2021, the Coronavirus Response and Relief Supplemental Appropriations Act*

Dear Ms. Remaley:

NRECA submits these comments to assist the National Telecommunications & Information Administration (NTIA) in implementing rules for the \$300 million Broadband Infrastructure Deployment Grant Program (“BID”) enacted on December 27, 2020 as part of the Consolidated Appropriations Act of 2021, the Coronavirus Response and Relief Supplemental Appropriations Act.¹

The members of NRECA are dedicated to improving the communities in which they serve and are active in rural economic development efforts. More than 150 electric co-ops are working toward meaningful and diverse solutions to provide broadband services, which can help bridge the digital divide and jumpstart local economies. Another 100 to 200 are exploring the feasibility of providing broadband, either on their own or through partnerships. This cooperative commitment is vital for some 30% of rural Americans that still lack access to broadband, compared to about 2% in urban areas.

The ongoing COVID-19 crisis has put the spotlight on the absolute and outright necessity for ubiquitous high-performing broadband for all Americans. The pandemic has forced us to rethink the practice and delivery of healthcare, education, and professional services, among many other things. We move forward in the midst, and wake, of the pandemic both on the local and national levels, but a realistic picture is being painted in rural America. In many of our communities, the impacts will be challenging and enduring. Simply stated, numerous people and businesses in rural America will struggle to emerge into a changed world that depends more each day on remote healthcare (telehealth), remote education (distance learning), and remote work (virtual offices).

¹ Consolidated Appropriations Act of 2021, the Coronavirus Response and Relief Supplemental Appropriations Act, enacted December 27, 2020, <https://www.congress.gov/bill/116th-congress/house-bill/133/text>.

NRECA, on behalf of its members, strongly supports the efforts of Congress and the NTIA to address the widely recognized digital divide between unserved and served areas of the country. As stated, there are many rural areas that still lack adequate access to broadband, which drives local, regional, national, and international communications. NRECA also recognizes that there are differences among electric cooperatives, among the laws of the states in which they are organized, and among the communities they serve and thus a single approach or model rarely fits all of the situations they collectively address. For that reason, flexibility in administering the broadband program is vitally important in order to serve the Congressional intent behind this program. The recommendations NRECA submit here will improve program flexibility and efficiency. This will benefit all applicants and the communities they plan to supply with vital high-speed broadband.

Partnerships:

NRECA appreciates the program's emphasis on partnership opportunities between a State, political subdivisions of a State and internet service providers, such as rural electric cooperatives (RECs). RECs are uniquely positioned to partner with States and municipalities. RECs are owned and operated by the members of their community and work closely with local leaders across a broad range of economic development issues. In addition, they have intimate familiarity with the territory in which they provide electric and/or broadband service and the needs of local residents and businesses. NRECA members look forward to working with the states and localities to assist in bringing vital robust broadband service to unserved communities.

Areas Eligible for Funding Under this Program:

The statute requires localities and service provider applicants to disclose any other federal support received for the provision of broadband service (such as ReConnect, RDOF, CAF II, etc.) in the proposed service areas. This suggests but does not mandate that award of aforementioned program funds to such areas will prohibit, or disfavor, eligibility in the Broadband Infrastructure Deployment Program ("BID"). While recognizing the need to minimize duplicative spending, given the current pandemic driving increased necessity for broadband access and the inaccuracy of current FCC broadband maps, NRECA urges NTIA not to prohibit these areas from eligibility. Instead, NTIA should prioritize funding to areas that are not slated to receive other broadband funds but specifically allow those areas where federal funding has been allocated to be eligible in the specific cases outlined below.

RDOF Phase I initial results should not disqualify an area from eligibility:

NTIA should not declare locations identified in the FCC's December 7, 2020, announcement of Rural Digital Opportunity Fund (RDOF) Phase I auction initial results automatically off limits from eligibility in the BID.² The initial RDOF auction results are, as the name indicates, initial. Winning a bid only gives a bidder the right to begin the lengthy and rigorous long-form review process to determine if they have the financial and technological capability to build and maintain a network at the speed and latency promised in the auction. NRECA, working with NRTC, filed a letter and whitepaper with the FCC expressing concern with the substantial subset of initial awards in the RDOF Phase I auction to fixed wireless and hybrid fixed wireless Gigabit tier bidders, despite the absence of meaningful industry consensus or a proven track record

² FCC News Release, *Successful Rural Digital Opportunity Fund Auction to Expand Broadband to Over 10 Million Rural Americans*, December 7, 2020, <https://www.fcc.gov/document/fcc-auction-bring-broadband-over-10-million-rural-americans>.

that fixed wireless technologies can deliver.³ Concern was also raised with the initial awards of entities relying on low-earth-orbit (LEO) satellites bidding at the 100/20 Mbps tier since this service is in beta testing and is not a proven technology.⁴

As outlined in the whitepaper, it is very likely that a fair number of these bidders will be found to be unqualified during the review process which was initiated by the January 29, 2021 deadline for long-forms. In the CAF II process, it took about eight months or more for the FCC to approve many long-forms and grant final authorization of funding. We anticipate a similar timeframe for the RDOF. If NTIA were to prematurely prohibit these initial RDOF awarded areas from being eligible for the BID program and the RDOF bidder is found to be unqualified, these communities could lose out twice on vital federal broadband funds and would be further left behind. This cannot be allowed to happen.

Given the high-risk nature of these specific bids, NTIA should allow the RDOF census block groups initially awarded specifically to fixed wireless providers in the gigabit tier and to LEO satellite providers to be eligible for funding by any applicant, but not give them priority. This would allow for NTIA and the FCC to review applications simultaneously. If the FCC were to deem the initial RDOF winner unqualified, then NTIA could award any qualifying applicant a grant for the respective areas quickly to speed deployment to these unserved communities. This carefully crafted approach, limited to areas provisionally assigned to RDOF gigabit fixed wireless and LEO satellite bidders, would provide flexibility among government programs.

CAF II satellite areas & areas receiving support for service below 25/3 Mbps:

Areas in the 2018 CAF II reverse auction that were awarded to geostationary satellite providers to deploy 10/1 Mbps should also be eligible for funding through the BID program. The FCC incorrectly allocated money to deploy broadband that did not meet its own minimum definition of broadband, 25/3 Mbps. This was an epic failure that locked in substandard service and locked out any additional federal broadband support for at least a decade in these areas. Not only would determining these areas to be eligible be consistent with the letter of the statute but also the intent of congress expressed in report language that limited the exemption for CAF II areas eligible for the United State Department of Agriculture's ReConnect program to only those areas (census blocks) for which the USF CAF-II recipient is subject to a buildout obligation of 25/3 Mbps or greater for fixed terrestrial.⁵ This same principal should also apply to other areas that received any federal support to deploy networks at speeds below 25/3 Mbps. Blocking new federal funding to these areas would relegate these communities to the wrong side of the digital divide.

Deadline for expending program funds:

The statute appears to require an applicant to expend funds within 1-year of receiving an award. We appreciate the desire for rapid utilization of these funds and deployment of broadband to unserved areas, but this is a tight timeframe for infrastructure deployment. For example, supply chain issues can limit the ability to deploy quickly. Generally, fiber cable needs to be ordered as much as 30+ weeks ahead of time and other

³ NRECA & NRTC Whitepaper, *The Rural Digital Opportunity Fund: Rural America's Broadband Hopes at Risk*, filed with the FCC February 1, 2021, in the matter of *The Rural Digital Opportunity Fund Auction*, AU Docket No. 20-34; *Rural Digital Opportunity Fund*, WC Docket No. 19-126; *Connect America Fund*, WC Docket No. 10-90, available at: <https://www.cooperative.com/programs-services/government-relations/regulatory-issues/pages/nreca-files-whitepaper-with-fcc-expressing-concern-with-fixed-wireless-gigabit-rdof-winners.aspx>.

⁴ See also, *Starlink RDOF Assessment Final Report*, NTCA – The Rural Broadband Association & Fiber Broadband Association, filed with the FCC February 8, 2021, <https://www.fcc.gov/ecfs/filing/10208168836021>

⁵ See, "Joint Explanatory Statement" to the Consolidated Appropriations Act, 2021 (Public Law 116-260), p. 37, <https://docs.house.gov/billssthisweek/20201221/BILLS-116RCP68-JES-DIVISION-A.pdf>.

components, such as electronics, may be difficult to obtain in a short time frame. Weather in the northern part of the country can limit the construction season requiring additional time. Further, if a project would cross federal lands the approval process can be lengthy. A waiver process to allow applicants additional time to expend the funds should be established to provide flexibility to address such issues that always arise in large infrastructure projects. NRECA recommends that NTIA allow recipients to request a waiver of the 1-year deadline to expend funds for up to 3-years after receiving funds.

Grant Speed and Latency Requirements:

Laudably, the BID program sets a sufficiently high standard requiring covered broadband projects to provide service with a download speed of not less than 100 Mbps and an upload speed of not less than 20 Mbps. NRECA agrees that this is an acceptable minimum standard but urges NTIA to prioritize grants proposing to deploy even faster and symmetrical speed networks.⁶ NRECA would urge priority to applicants proposing to build symmetrical service of at least 100/100 Mbps with additional preference given to faster gigabit networks. This would ensure that any network funded by the program would meet the growing bandwidth needs of consumers for years to come.

Conclusion:

NTIA should not limit eligible areas unduly. Specifically, the RDOF Phase I areas where initial awards were approved for fixed wireless bidders in the Gigabit tier and entities relying on low-earth-orbit (LEO) satellites bidding at the 100/20 Mbps should specifically be deemed provisionally eligible for the BID program until the FCC has approved their long-form and final authorization for funding granted. Areas in the 2018 CAF II reverse auction that were awarded to geostationary satellite providers to deploy 10/1 Mbps should also be eligible for funding through the BID program. Similarly, other areas that received federal funding to deploy networks below the current definition of broadband, 25/3 Mbps, should not be precluded from being eligible for to program. Making these areas eligible for BID money is consistent with the statute. A waiver process should be implemented to allow a recipient an additional 2-years (3-years total from receiving funds) to expend funds if needed. Finally, NTIA should implement a weighted evaluation system that will prioritize applicants proposing to build gigabit and symmetrical networks at or above 100/100 Mbps.

Sincerely,

/s/ Brian M. O'Hara
Senior Director Regulatory Issues –
Telecom and Broadband
NRECA

⁶ To speed implementation, NTIA could adopt existing evaluation criteria similar to that used for the USDA ReConnect program or RDOF speed and latency tiers. Modifications would be required but these programs can serve as a framework that can be quickly adapted to fit the NTIA program.