

January 6, 2020

Via ECFS

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

Re: ***Rural Digital Opportunity Fund, WC Docket No. 19-126; Connect America Fund, WC Docket No. 10-90***

Dear Ms. Dortch:

NTCA – The Rural Broadband Association (“NTCA”) and ACA Connects – America’s Communications Association (“ACA Connects”) hereby respond to a recent *ex parte* filed on behalf of USTelecom in the above-referenced docket that argues that, for the proposed Rural Digital Opportunity Fund (“RDOF”) 100 Mbps performance tier, the Federal Communications Commission (“Commission”) should lower the upstream speed to 10 Mbps from 20 Mbps.¹ NTCA and ACA Connects submit that the Commission should reject USTelecom’s proposal for several reasons:

First, USTelecom’s proposal runs counter to Chairman Pai’s admonition that “the Universal Service Fund must be forward-looking and support the networks of tomorrow.”² It also is inconsistent with recent letters from dozens of Members of Congress calling for the Commission to use universal service funding to “support sustainable networks capable of delivering the best possible broadband access for many years to come.”³ Instead, USTelecom

¹ See Letter from AJ Burton, Vice President, Federal Regulatory, Frontier Communications, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 19-126 (Dec. 23, 2019). USTelecom’s request is based on its claims that “an upload target of 20 Mbps likely drives significant additional deployment costs...compared to a 10 Mbps upload target” and “a 20 Mbps upload target provides little to no additional benefits to the end user customer as all key upload cases...can be similarly accomplished with 10 Mbps.” The Wireless Internet Service Providers Association filed a letter in support of USTelecom’s proposal. See Letter from Louis Peraetz, Vice President of Policy, Wireless Internet Service Providers Association, WC Docket No. 19-126 (Dec. 31, 2019).

² See, “Chairman Pai Announces Plan to Launch \$9 Billion 5G Fund for Rural America,” FCC News (Dec. 4, 2019) available at <https://docs.fcc.gov/public/attachments/DOC-361168A1.pdf>.

³ Letter from Senators John Thune, Amy Klobuchar, and 46 other Senators to The Honorable Ajit Pai, Chairman, Federal Communications Commission (Dec. 9, 2019) available at https://www.thune.senate.gov/public/_cache/files/ec9ab287-8920-4353-b46e-1396ccdf103e/F68789196918856CBDF441B3B801C99E.rdof-letter-12.9.19.pdf; Letter from Representatives Peter Welch, Tim Walberg, and 54 other Representatives to The Honorable Ajit Pai, Chairman, Federal Communications Commission (Dec. 13, 2019) available at <https://walberg.house.gov/sites/walberg.house.gov/files/FCC%20RDOF%20letter.pdf>.

asks that the Commission reverse course and give consumers in eligible areas performance that is even lower than provided in the 100 Mbps tier as part of last year's Connect America Fund ("CAF") Phase II auction.⁴ It would be remarkable "backsliding" indeed from the CAF Phase II auction to adopt lesser standards – such as lower upstream speeds or entirely new, lower speed tiers – for an auction that will be conducted at least two years later and will distribute funds into the early 2030's. Rather than closing the digital divide, USTelecom's proposal will only widen it.⁵

Second, under USTelecom's proposal, consumers in eligible areas would not receive reasonably comparable upstream service, as required by the statute, initially, let alone over the 10-year duration of the RDOF program.⁶ In developing the RDOF auction, including the performance tiers and weights, the Commission must seek to fulfill the ultimate goal of universal service – promoting the availability of reasonably comparable services at reasonably comparable rates.⁷ Putting aside any "forward-looking" goals as articulated by Chairman Pai and urged by Congress, it must not be lost in this debate that what USTelecom proposes is lower than what average upload speeds are today.⁸ The Commission will not achieve the objective of reasonable comparability by cutting in half the upload speed for one of the highest performance tiers from the previous auction – to a level that is less than 25% of the average upload speed today.

Third, USTelecom's proposal relies on a presentation by its consultant that is the antithesis of technologically neutral.⁹ Instead, page after page of the presentation reveals that the proposal is driven primarily by concerns that CBRS or other spectrum-based providers otherwise

⁴ *Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949 (2106).

⁵ The USTelecom proposal would make the RDOF auction look as antiquated at the end of its distribution term as the original CAF proposal of 4/1 Mbps broadband in 2011 looks today.

⁶ In their December 23, 2019 *ex parte*, NTCA, ACA Connects, and the National Rural Electric Cooperatives Association noted that according to the Commission's most recent Measuring Broadband America report, the median download speed among the largest providers was 72 Mbps as of September 2017 and that, accordingly, performance tiers with download speeds below the median would "seem discordant to include in the RDOF auction as a 2030 speed target." See Letter from Michael Romano, Senior Vice President–Industry Affairs & Business Development, NTCA—The Rural Broadband Association to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 19-126 and 10-90 at 2 (Dec. 23, 2019) ("NTCA/ACA Connects/NRECA *Ex Parte*"). As discussed herein, the same should hold true for upload speed targets as well.

⁷ 47 U.S.C. § 251(b)(3).

⁸ Speedtest indicates the average upload speed in the U.S. as of November, 2019 was 48.41 Mbps. See Speedtest Global Index, United States, Fixed Broadband available at <https://www.speedtest.net/global-index/united-states#fixed>.

⁹ See "Comments on the RDOF Uplink Service Objective," Lemay-Yates Associates Inc., WC Docket No. 19-126 (Dec. 19, 2019).

may find it uneconomical to bid in the 100 Mbps tier.¹⁰ In other words, the proposal is engineered not to achieve reasonable comparability or to respond to real assessments of consumer need, but to rejigger the performance requirements/weighting in a way that will allow spectrum-based bids to perform better in the RDOF than in the CAF Phase II auction. Changes driven by the transparent desire to accommodate a particular technology's limitations can hardly be deemed "technologically neutral" in the end and should be rejected.

Fourth, beyond a cursory comment that "in many consumer applications" a 10 Mbps upload capability is sufficient, USTelecom makes no effort to evaluate the near-term or longer-term benefits of better upload performance. By contrast, the record contains substantial discussion highlighting the importance of upload performance today and providing context for projections of upload demands to come. For example, to the extent broadband is intended to enable (among other things) e-commerce in rural areas, "[e]mployees in enterprises large and small send much of their time both sending *and* receiving – uploading *and* downloading – large files and other content."¹¹ Moreover, all five Commissioners have spoken at one time or another about the importance of applications such as "inverted classrooms" and telehealth,¹² all of which require the ability to interact from home as opposed to receiving content passively. There is consensus that we are just on the cusp of such applications, rather than at the precipice – meaning that the Commission should foster the deployment of networks that will be capable of fulfilling such increased upload demands a decade from now.

¹⁰ In total, in the CAF II auction, fixed wireless providers won \$71.8M in annual support (48% of the total amount awarded) to serve 253,752 locations (37% of the total). *See* "Connect America Fund Phase II Auction Results," Rural Broadband Auctions Task Force, Federal Communications Commission (Sept. 26, 2018). Based on a sampling of Commission News Releases, well over one-half of this support to fixed wireless providers is required to be used to provide 100/20 Mbps service to more than 100,000 locations. *See* "FCC Authorizes \$524 Million in Funding for Rural Broadband from Connect America Fund Auction," FCC News, July 15, 2019 (fixed wireless providers will receive over \$400M support over 10 years to provide 100/20 Mbps service to more than 90,000 locations); "FCC Authorizes \$121 Million in Funding for Rural Broadband," FCC News, Aug. 12, 2019 (fixed wireless providers will receive over \$50M support over 10 years to provide 100/20 Mbps service to more than 15,000 locations).

¹¹ Comments of NTCA, WC Docket Nos. 19-126 and 10-90 (Sept. 20, 2019), at 14.

¹² *See, e.g.,* Remarks of Chairman Ajit Pai at Rio Rancho Cyber Academy (Aug. 20, 2018); *Promoting Telehealth in Rural America*, WC Docket No. 17-310, Report and Order (rel. Aug. 20, 2019), at Statements of Commissioner Michael O'Rielly, Commissioner Brendan Carr, and Commissioner Geoffrey Starks; Statement of Commissioner Jessica Rosenworcel on New Homework Gap Data from the Pew Research Center (Oct. 26, 2018).

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Finally, as NTCA and ACA Connects have already pointed out, the Commission's proposed weighting methodology would not maximize participation by bidders for the gigabit performance tier and thereby would not produce the most cost-effective outcome.¹³ The USTelecom proposal favoring a lower speed tier would only exacerbate that result.¹⁴

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed via ECFS.

Sincerely,

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¹³ See NTCA/ACA Connects/NRECA *Ex Parte* at 2.

¹⁴ The USTelecom proposal is further flawed in that it ignores the interplay between performance requirements and bidding weights. That is, under the Commission's weighting methodology, lower performance tiers receive a greater bidding discount. Accordingly, should the upload speed for the 100 Mbps tier be reduced by half, the bidding discount for the tier should be increased as well.