



March 11, 2021

VIA ECFS

The Honorable Jessica Rosenworcel
Acting Chairwoman
Federal Communications Commission
45 L Street, NE
Washington, DC 20554

RE: *Connect America Fund, WC Docket No. 10-90; Rural Digital Opportunity Fund, WC Docket No. 19-126; Auction 904, AU Docket No. 20-34*

Dear Acting Chairwoman Rosenworcel:

This letter is submitted on behalf of NTCA–The Rural Broadband Association in response to recent filings by the Wireless Internet Service Providers (“WISPA”) and USTelecom–The Broadband Association (“USTelecom”) in the above-referenced proceedings.¹ Both of these letters address review by the Federal Communications Commission (the “Commission”) of long-form applications in the Rural Digital Opportunity Fund (“RDOF”) auction, partly in response to prior NTCA submissions.

As an initial matter, WISPA goes to awkward lengths and great pains in its recent letter to characterize the simple process recommendations submitted by NTCA in a prior letter² as “untimely and unjust changes” that would somehow reconsider previous decisions and/or introduce “massive delays” in support authorizations.³ Indeed, even as it purports to support “thorough and rigorous” review of long-form applications,⁴ WISPA’s arguments would squelch efforts to bring greater transparency and accountability in the review process. Rather than accepting WISPA’s resistance to any such measures, the Commission can and should take its cues instead from the 160 members of Congress who expressed support for reasonable transparency and accountability in the RDOF review process.⁵

¹ *Ex Parte* Letter from Claude Aiken, President & CEO, WISPA, to Acting Chairwoman Rosenworcel, WC Docket No. 19-126, *et al.* (filed Feb. 22, 2021) (“WISPA Letter”); *Ex Parte* Letter from Patrick R. Halley, Senior Vice President, Policy & Advocacy, and General Counsel, USTelecom, to Acting Chairwoman Rosenworcel, WC Docket No. 19-126, *et al.* (filed Feb. 26, 2021) (“USTelecom Letter”).

² *Ex Parte* Letter from Michael R. Romano, Senior Vice President, Industry Affairs & Business Development, NTCA, WC Docket No. 19-126, *et al.* (filed Feb. 5, 2021).

³ WISPA Letter at p. 1.

⁴ *Id.*

⁵ *See, e.g.*, Letter from Reps. James E. Clyburn and Tim Walberg, Sens. John Thune and Amy Klobuchar, and 156 other Members of Congress to Chairman Ajit Pai (dated Jan. 19, 2021).

First, WISPA opposes the most basic of transparency measures in connection with review of long-form applications – contending that even *mere publication* of the standards by which the Commission intends to conduct its review would somehow represent reconsideration of prior decisions and inexplicably violate principles of technological neutrality.⁶ Straining to support its procedural argument, WISPA cites the Commission’s decision to use case-by-case review of applications in *the short-form stage* to argue that there is no need or justification for any “definitive or published standards” at *the long-form stage*.⁷

Such arguments not only conflate the differing stages of applications, but they defy logic and fly in the face of the calls from Congress and many other stakeholders for greater visibility into the review process. Although the Commission will of course review each long-form application on an individual case basis, it will presumably measure each application against *some* well-established and objective common technical measures rather than each reviewer applying his or her own standards. Indeed, WISPA’s non-sequitur is analogous to contending that teachers should neither adopt nor publish a set of correct answers for a test because each student’s exam needs to be evaluated individually. The public interest is not well-served by failure to disclose the technical standards by which applications will be judged, and there is no sound basis to withhold the standards by which the Commission plans to evaluate whether various technologies will be capable of delivering the services promised by winning bidders.

As a corollary to this line of argument, WISPA takes aim at submissions by NTCA and the National Rural Electric Cooperative Association providing sample analyses of fixed wireless deployments for the Commission’s consideration.⁸ WISPA’s arguments miss the mark as a matter of substance – and miss the very point of these submissions as well. As a substantive attempt to rebut NTCA’s technical analysis, WISPA attaches an appendix prepared by its consultant. If anything, however, the consultant’s attempts to debate the points raised by NTCA’s expert *underscore* the need for transparent and well-settled objective standards to evaluate network capabilities and to publish such standards for all to see and understand. Key points for the Commission’s consideration include:

- The WISPA consultant indicates that manufacturers of fixed wireless equipment assert the ability to deliver services between 500 and 700 meters, rather than the 500 feet cited by NTCA’s expert.⁹ As an initial matter, it is important to note that the consultant makes passing reference to “line of sight”¹⁰ considerations as if these are a minor detail rather than a significant factor. But line of sight is essential and the fact that the consultant fails to address it in any meaningful way is telling. Indeed, it is difficult to see how any provider could promise to deliver Gigabit level service over even 500 to 700 meters without having conducted a field survey that takes account of topography, vegetation and foliage, and other obstructions affecting locations at those distances in every eligible census block. Moreover, even if these assertions regarding distance were validated “on the ground” in the context of a point-to-multipoint or mesh deployment that would be needed to serve rural customers (as compared to

⁶ WISPA Letter at pp. 4-5.

⁷ *Id.* at p. 4 (citing *Rural Digital Opportunity Fund Phase I Auction Scheduled for October 29, 2020; Notice and Filing Requirements and Other Procedures for Auction 904*, WC Docket No. 19-126, *et al.*, Public Notice, 35 FCC Rcd 6077, 6125 (2020) (“*Auction Procedures Public Notice*)).

⁸ WISPA Letter at pp. 5-6.

⁹ *Id.* at Appendix A, p. 2.

¹⁰ *Id.*

a point-to-point scenario which is what NTCA believes the consultant’s greater range estimates in fact refer to), this would still indicate a maximum reach of at most 2,300 feet, meaning the Commission would need to verify that access points with sufficient backhaul will be deployed more than every half-mile – again with confirmed clear lines of sight between them and the locations to be served – across wide swaths of rural America as part of the deployment.

- The WISPA consultant’s analysis appears premised upon the notion that a 300:1 oversubscription ratio is acceptable today, and that a ratio of 100:1 will suffice for years to come.¹¹ Even if one were to accept his contention that “[t]oday’s typical provider has *average* per-subscriber utilization of about 3 Mbps”¹² – an assertion provided without any citation or support – *the very purpose of the RDOF auction is to pay billions of dollars from ratepayer resources to enable deployment of networks that will deliver capacity on demand to consumers far in excess of 3 Mbps over the next ten years.*¹³ Although a reasonable level of oversubscription is always an appropriate part of network engineering, the Commission should certainly expect more than 3 Mbps or 10 Mbps of capacity per-customer for the amount of support being distributed over the decade for ostensible delivery of Gigabit services to each customer. Moreover, the WISPA consultant’s claims regarding the reasonableness of 300:1 or 100:1 oversubscription ratios are belied by the actual operating practices of wireless Internet service providers, with real-world oversubscription on such networks estimated at 4:1 or less.¹⁴
- The WISPA consultant argues that NTCA’s expert overstated the potential for harmful interference from unlicensed indoor devices in the U-NII band (such as Wi-Fi). Just a few pages later, however, he concedes that Gigabit service using the 5 GHz band “is often unrealistic for point-to-multipoint access purposes [such as delivering services to multiple locations in RDOF areas] because the same frequencies are often used for Wi-Fi and other purposes.”¹⁵
- The WISPA consultant concedes that “most Gigabit wireless solutions are intended for ‘in-town’ use because they operate on the ‘60 GHz’ band,” but then argues that “in some rural areas” Gigabit speeds are possible because “not all farms and ranches are laid out a distance” and because rural areas “often include small towns and hamlets.” Put another way, it appears that WISPA’s consultant acknowledges that Gigabit fixed wireless service is achievable perhaps only in “higher-density pockets” across rural America.¹⁶ Certainly, the Commission will want and need to take a closer look at how many *Rural* Digital Opportunity Fund eligible areas won by fixed wireless bidders might happen to qualify as “higher-density pockets.”

¹¹ *Id.* at Appendix A, p. 2.

¹² *Id.* (emphasis in original).

¹³ It is similarly concerning the WISPA consultant’s assessment appears premised upon the notion that RDOF winners need only deliver *either* full download or upload capability at any given point in time rather than engineering networks to accommodate simultaneous demand at the specified levels. *Id.* at Appendix A, p. 4. This would be tantamount to a contract being awarded for construction of a four-lane highway in which the only way four lanes can then be realized in either direction is by shutting down some or all of the lanes in the other direction.

¹⁴ *See Ex Parte* Letter from Michael R. Romano, Senior Vice President, NTCA, to Marlene H. Dortch, Secretary, Commission, WC Docket No. 19-126, *et al.* (filed Feb. 21, 2021), Vantage Point Solutions Report at n. 16 (citing Preseem Fixed Wireless Network Report, Fall 2020 Edition).

¹⁵ WISPA Letter at Appendix A, pp. 1 and 4.

¹⁶ *Id.*

- The WISPA consultant contends that mesh networks leveraging millimeter wave spectrum may work in rural areas because “sufficient capacity exists in point-to-multipoint sectors to support a degree of meshing not practical on lower-frequency bands.” But he then proceeds to raise the need for sufficient density to allow “rerouting in the event of congestion” and the use of “redundant backhaul injection points”¹⁷ – which will of course present challenges in rural areas that are not “higher-density pockets.”

These examples serve to highlight, rather than overcome, the challenges associated with using fixed wireless technologies to deliver Gigabit services in rural America. Moreover, even if these points were deemed inconclusive, the debate between NTCA’s expert and the WISPA consultant reinforces at the very least precisely why publication of the standards that the Commission will use to evaluate each application is important to instill transparency in the review process and confidence in the outcomes. For these reasons, NTCA’s request for the Commission simply to publish the objective technical standards by which it will evaluate long-form applications is procedurally proper and represents sound public policy.

Second, WISPA opposes any additional measures of accountability in the review of RDOF long-form applications, contending that a relatively brief 60-day period for review and comment on applications subject to a protective order suffers from procedural defects and would introduce delay in the awarding of funds.¹⁸ But just as in its arguments against publication of standards, WISPA cites to the Commission’s findings with respect to the *short-form* review process in arguing that it would be procedurally improper to permit review and comment in the *long-form* stage. Specifically, while WISPA asserts that the Commission found in the *Auction Procedures Public Notice* that inviting comment would “lead to delays in the review,”¹⁹ this conclusion was adopted specifically within the context of the short-form stage and a discussion of case-by-case reviews of proposals to bid in higher tiers prior to the auction. There is nothing in the *Auction Procedures Public Notice* that precludes the Commission from obtaining additional input on long-form applications.

As for potential delays, WISPA trots out a parade of horrors with respect to when such a process would begin and when it would end.²⁰ USTelecom raises a similar, if more muted, concern about comments on the long-form applications leading to “unnecessary delay and criticism that decisions to deny funding are not based on an unbiased agency review.”²¹ The 60-day process proposed by NTCA, however, is quite simple, straightforward, streamlined, and self-contained: (1) the Commission would establish a protective order; (2) the Commission would open a 60-day window for parties to execute the protective order and review and comment on applications; and (3) after the 60-day window, the Commission would proceed with continued review by its experts of the long-form applications just as it would have in the absence of such a window, but now with the benefit of additional input received on certain applications. WISPA’s hand-waving about potentially prolonged challenges (which would be precluded by the 60-day clock) and the potential for concerns about certain applications to be shared with local authorities (which could happen with or without this 60-day window) is thus misplaced, and its concerns are far outweighed by the benefits that would follow from additional expert review and comment on applications.

¹⁷ *Id.* at Appendix A, p. 3.

¹⁸ *Id.* at pp. 6-7.

¹⁹ *Id.* at p. 6 (quoting *Auction Procedures Public Notice* at 6125).

²⁰ WISPA Letter at p. 7.

²¹ USTelecom Letter at 3.

As for USTelecom's concern regarding allegations of bias, the Commission is an expert agency well-versed in receiving input from various stakeholders and reaching reasoned decisions – indeed, but for the auction application procedures, such work is standard fare for the Commission. There is no reason to believe that permitting brief review and comment on long-form applications would undermine the integrity of the process; to the contrary, it would enhance the integrity of this effort and aid the Commission's staff by ensuring the agency can take account of (or disregard, as appropriate) input of outside experts related to operational, financial, and technical criteria. Indeed, obtaining comments from other stakeholders should *help* facilitate the review process rather than delay it, offering for example localized input to the Commission's expert reviewers that might otherwise be difficult or impossible to obtain regarding factors like lines of sight, topography, and foliage and vegetation in specific areas where deployments are planned.²² Nonetheless, if the Commission were to want to target such opportunities for public input, it could certainly do so based upon criteria such as focusing more stringent review on those given special dispensation to bid in higher tiers or other factors instead such as the relative size and scope of awards.²³

Third, WISPA objects to NTCA's recommendation that the Commission publish the reasons for determining whether or not an applicant possesses the operational, financial, and technical capabilities to perform as promised in the long-form application. WISPA expresses concern that this could become “yet another opportunity for unsuccessful applicants to challenge the Commission's decision to authorize support.”²⁴ NTCA did not recommend, however, any *post hoc* challenge process with respect to such determinations, and parties are always free of course to raise their concerns to the Commission regarding decisions reached regardless of whether the reasons for those decisions are articulated. It defies logic, however, to contend that the Commission's explanation of the basis for any decision it reaches would not “serve[] the public interest or the objectives of the RDOF program.”²⁵ A significant bipartisan cross-section of Congress and many other stakeholders certainly support greater transparency into decisions reached that affect billions of dollars of ratepayer resources and the broadband future of millions of rural Americans. The public interest would be served, rather than undermined, by the Commission's articulation of its reasoned decision-making.

Finally, WISPA closes its correspondence by attempting to portray and dismiss NTCA's concerns as driven by nothing more than disappointment with certain outcomes. As NTCA has conveyed repeatedly, however, the ultimate hope – because it will deliver the best possible broadband to consumers in these rural areas as soon as possible – is that each and every winning bidder is in fact capable of performing precisely as promised. Moreover, there is nothing in NTCA's mere process recommendations that would prejudge any such review, and NTCA's proposals as initially put forward would apply the same procedures for review to all winners. But the acceptance of one-off short-form applications that included confidential requests to bid in different tiers and the ensuing case-by-case

²² While thorough due diligence is essential, NTCA shares the interest of other stakeholders in enabling timely review and approval or rejection of long-form applications, particularly as rendering such determinations prior to any future auctions would be important to ensure areas covered by rejected applications can be included within those future rounds. *See* USTelecom Letter at 3. In this regard, obtaining localized input on “conditions on the ground” from stakeholders could again accelerate and enhance review as compared to Commission staff being required to assess line of sight, topography, and other material factors from afar.

²³ *See, e.g., Ex Parte* Letter from Caressa D. Bennet, Attorney for Ensuring RDOF Integrity Coalition, to Marlene H. Dortch, Secretary, Commission, WC Docket No. 19-126, *et al.* (filed Mar. 10, 2021).

²⁴ WISPA Letter at 7.

²⁵ *Id.*

March 11, 2021

Page 6 of 6

consideration of them pursuant to unpublished standards of review has injected questions into RDOF that did not persist at nearly the same level in the Connect America Fund Phase II auction. The best means to address such concerns and otherwise promote the integrity of the auction is to ensure that the RDOF long-form application process is conducted with reasonable measures of transparency and a degree of accountability that will help ensure each applicant awarded funds is indeed capable of performing as promised. By contrast, the only “reliance interests”²⁶ that would be dashed by a more transparent and accountable process are held by those that may have had no business bidding in a certain way in the first instance.

Thank you for your attention to this correspondence. Pursuant to Section 1.1206 of the Commission’s rules, a copy of this letter is being filed via ECFS.

Sincerely,

/s/ Michael R. Romano

Michael R. Romano
Senior Vice President –
Industry Affairs & Business Development
NTCA–The Rural Broadband Association

cc: Travis Litman
Ramesh Nagarajan
Greg Watson
Austin Bonner
Carolyn Roddy
Michael Janson
Kirk Burgee
Jonathan McCormack
Audra Hale-Maddox
Kris Monteith
Alexander Minard
Suzanne Yelen

²⁶ *Id.* at 8.