

**Before the
Federal Communications Commission
Washington, D.C. 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 UTILITIES TECHNOLOGY COUNCIL

The Utilities Technology Council (“UTC”) hereby files the following reply comments in response to the Commission’s Notice of Proposed Rulemaking in the above-referenced proceeding.¹ UTC reiterates its support for the Rural Digital Opportunity Fund (“RDOF”) and urges the Commission to move forward expeditiously towards conducting the auction next year. In that regard, UTC continues to support the Commission’s proposals for the RDOF Phase I and Phase II budget, as well as its proposal to award the funding through competitive bidding. UTC continues to urge the Commission to adjust the performance tiers and the weighting factors to promote the deployment of broadband networks that will provide higher speeds and lower latency. Specifically, UTC continues to urge the Commission to increase the minimum broadband speeds to 100/20 Mbps as the Baseline tier and 250/50 Mbps as the Above Baseline tier, and it urges the Commission to more heavily favor projects that would provide faster speeds and lower latency, including a weighting factor in favor of synchronous speeds. Finally, UTC continues to urge the Commission to focus first on serving high-cost areas that currently lack access to broadband speeds of 25/3 Mbps, and defer auctioning extremely high-cost areas until Phase II of the RDOF.

UTC disagrees with comments that attempt to water down the reporting requirements and eliminate subscribership penetration requirements. Safeguards are necessary to ensure that winning bidders actually provide broadband services with the speeds, latency and coverage that they proposed in

¹ Rural Digital Opportunity Fund, *Notice of Proposed Rulemaking*, WC Docket No. 19-126 (released Aug. 2, 2019)(hereinafter “NPRM”).

their applications. Moreover, subscribership penetration requirements will help the Commission to determine if the services that are being offered in rural and unserved areas are reasonably comparable in terms of cost and quality to the level of services that are available in urban areas. That said, UTC reiterates that the subscribership penetration requirements that the Commission has proposed should be reduced to percentages that are more realistic, particularly in areas that were previously served with 10/1 Mbps speeds.

UTC also disagrees with comments that claim that pole attachments are a barrier to broadband in rural areas and that regulation of electric cooperatives and public-power utilities is necessary or even appropriate.² At the outset, it should be underscored that Congress has chosen to exclude electric cooperatives and public-power utilities from FCC jurisdiction under Section 224 in recognition that pole attachment regulation of these entities is not necessary to ensure access at just and reasonable rates, terms and conditions.³ Pole attachments from these—or any other—utilities are not a barrier to broadband. Even when these utilities have offered free pole attachments, broadband service providers have refused to deploy in these utilities’ service areas.⁴ In addition, it should also be noted that Washington state – where CenturyLink claims to have been delayed by a municipal utility in a dispute over pole attachments—regulates pole attachments by public utilities districts.⁵

To the extent that there is a barrier to broadband in the state of Washington (and in other states

² Comments of CenturyLink in WC Docket No. 19-126 at 22-27 (filed Sept. 20, 2019). Comments of ITTA – The Voice of America’s Broadband Providers in WC Docket No. 19-126 at 22-23 (filed Sept. 20, 2019).

³ See 47 U.S.C. §224(a)(1)-(3).

⁴ See e.g. Letter from Jim Matheson, CEO of the National Rural Electric Cooperative Association to Ajit Pai, Chairman of the Federal Communications Commission in GN Docket 17-83, WC Docket No. 17-84, and WT Docket No. 17-79, filed June 10, 2019, and see attached whitepaper entitled “Rural Electric Cooperatives: Pole Attachment Policies and Issues, Broadband Deployment in Rural America Not Impeded by Pole Attachment Rates” at 14-15 (finding that “offers to provide free or discounted pole attachments do not encourage communications companies to serve rural areas.”)

⁵ See Wash. Rev. Code Ann, §54.04.045, available at <https://apps.leg.wa.gov/RCW/default.aspx?Cite=54.04.045>. (requiring locally regulated utilities to provide pole attachments at regulated rates and defining a “locally regulated utility” as a public utility district not subject to rate or service regulation by the utilities and transportation commission.)

like it), it is because of restrictions these states have imposed that prevent utilities from offering retail broadband. Despite this type of restriction, utilities are offering wholesale services in these states, which empowers the deployment of broadband into unserved areas by third-party service providers. The problem is that utilities in these states are unable to access RDOF because they cannot obtain Eligible Telecommunications Carrier (ETC) status because of state laws barring them from providing retail communications services to end users. As more fully explained below, UTC urges the Commission to allow utilities who are subject to such state restrictions to be able to obtain access to RDOF by waiving the ETC requirement, which is clearly unnecessary and in fact hurts consumers by denying access to funding that would promote broadband access into unserved areas by third party service providers who use utility broadband networks.⁶

I. The Commission Should Move Forward With its Proposal to Conduct the RDOF Auction at its Proposed Budget and in Two Phases.

Although there are comments suggesting various improvements, there is widespread support for the Commission's general proposal to adopt rules for the RDOF auction that are based upon the Connect America Fund Phase II auction. Specifically, comments echo UTC's support for the Commission proposal to adopt a ten-year term of support.⁷ Moreover, the comments also agree with the Commission's proposal to conduct the auction in two phases and to budget \$16 billion in Phase I and 4.4 billion in Phase II, although a number of the comments echoed UTC in recommending that the Commission reassess the adequacy of the total budget after the Phase I auction.⁸

The Commission should not delay conducting its auction. Although the broadband maps are

⁶ See also Comments of Alaska Communications in WC Docket No. 19-126 at 7-10 (filed Sept. 20, 2019)(urging the Commission to eliminate the ETC service requirement and provide targeted support (i.e. funding) in certain areas where ILECs decide to offer broadband services).

⁷ NPRM at ¶15. See also Comments of ACA Connects in WC Docket No. 19-126 at 1 (filed Sept. 20, 2019); and Comments of Adtran in WC Docket No. 19-126 at 3 (filed Sept. 20, 2019).

⁸ See NPRM at 18 (inviting comment on whether the Commission should reassess the adequacy of the total budget after the Phase I auction.)

clearly in need of improvement, delaying the auction to collect better data would only punish consumers in areas that currently lack access to broadband.⁹ Contrary to some comments, the public interest would not be served by withholding funding in areas that are either unserved or where there are only a few locations that are served.¹⁰ The perfect should not be the enemy of the good. Any discrepancies in the accuracy of the broadband-mapping data can be adequately addressed in the interim through a robust challenge process, consistent with the comments of UTC and other parties.¹¹ The need for a robust challenge process is important because “[a]bsent the ability to correct such errors in claimed coverage via a simple challenge process, many census blocks purportedly but not actually served with 25/3 Mbps broadband could be erroneously excluded from Phase I of the RDOF.”¹²

On a related note, UTC and other comments on the record supported the Commission’s proposal to make eligible those census blocks in which the price-cap carrier receiving model-based support is the only terrestrial provider reporting the deployment of 25/3 Mbps broadband service in that block, but has not deployed such service to all locations in the block.¹³ UTC reiterates its support for this proposal and joins with other commenting parties in urging the Commission to provide a robust challenge process to open up census blocks that are not actually served with 25/3 Mbps either in whole or in part.¹⁴

II. The Commission Should Adjust the Performance Tiers and the Weighting Factors to Promote Deployment of Broadband Networks Capable of Providing Faster Speeds and Lower Latency

UTC reiterates its support for the Commission’s preference in favor of faster-speed and lower-

⁹ See *Id.* at ¶45, n. 83 (stating “[waiting] for the availability of more granular data before moving forward would only punish those millions of Americans that we know do not have access to digital opportunity.”)

¹⁰ See e.g. Comments of CenturyLink in WC Docket No. 19-126 at 8-9.(urging the Commission to delay the auction until the Commission completes a broadband mapping fabric.)

¹¹ Comments of UTC at 14-15.

¹² Comments of NTCA – The Rural Broadband Association in WC Docket No. 19-126 at 37 (filed Sept. 20, 2019).

¹³ See *NPRM* at ¶49.

¹⁴ See Comments of UTC at 15.

latency broadband services, and it echoes the comments on the record that urge the Commission to increase the performance tier speeds and their respective weighting factors (as well as the weighting factor for high-latency services) in order to promote investments in and deployment of broadband networks that are future-proof and will be able to keep pace with increasing customer expectations so that the cost and quality of broadband service in rural America is reasonably comparable to broadband services that are available in urban parts of the country. Specifically, UTC recommends that the Commission increase the baseline speed to 100/20 Mbps and the above baseline speeds to 250/50 Mbps; and it also recommends adjusting the weighting factors so that the Baseline service tier would be weighted at 75 points; Above Baseline would be weighted 35 points; and Gigabit would be weighted zero points.¹⁵ Finally, the Commission should subtract 10 points from the weighting for projects that propose symmetrical speeds, and this weighting factor could be applied after the clearing round.¹⁶

Increasing the performance tiers and the weighting factors to favor higher speeds is consistent with the comments on the record.¹⁷ As ACA Connects explained in its comments, the weighting factors in the CAF Phase II auction “unduly favored service providers relying on lower-performance tiers (technologies) while discouraging bidding in higher-performance tiers.” Accordingly, ACA Connects recommended that the Commission increase the weighting factor for the Baseline performance tier to 75 points and the Above Baseline performance tier to 35 points, which it believes will “increase participation at the RDOF auction, spur robust competitive bidding, and result in the most efficient use of Commission support.”¹⁸ ACA Connects also agrees with UTC that the speeds for the performance tiers should be

¹⁵ See Comments of UTC at 16 and at n. 19.

¹⁶ *Id.* at n. 20.

¹⁷ See Comments of Race in WC Docket No. 19-126 at 3 (filed Sept. 20, 2019)(suggesting increasing the Above Baseline tier to 200 Mbps.); Comments of NTCA – The Wireless Broadband Association in WC Docket No. 19-126 at 7-9 (filed Sept. 20, 2019)(recommending increasing the “baseline” service tier to 100 Mbps and increasing the usage allowance to 3 TB per month for baseline and 5 TB for higher performance tiers); and Comments of WTA – Advocates for Rural Broadband in WC Docket No. 19-126 at 9-16 (filed Sept. 20, 2019)(suggesting an “evolving baseline tier” that would increase speeds to 50/6 Mbps in years 6-10 of the term of funding).

¹⁸ Comments of ACA Connects in WC Docket No. 19-126 at 8.

increased in recognition that U.S. consumer demand for broadband services already exceeds the 25/3 Mbps speed/150 GB monthly usage allowance proposed for the RDOF Baseline performance tier.¹⁹ Accordingly and consistent with UTC's comments, ACA Connects suggests starting the performance tiers at 100/20 Mbps instead of 25/3 Mbps.²⁰ Other comments on the record echo the need to increase the performance tier speeds and the weighting factors to encourage investment in and deployment of broadband networks that are capable of meeting customer demands now and into the future.²¹

There was also widespread support among the comments for increasing the weighting factor for high-latency services, as well as establishing a new weighting factor in favor of symmetrical services. As Adtran explained in its comments, there are significant drawbacks to a high-latency service, which particularly affect applications such as voice, interactive online gaming, web page loading, new transport level protocols, virtual private networks (VPNs), over the top VoIP, and other miscellaneous applications. For this reason, Adtran and other comments on the record support increasing the weighting factor for high latency services.²² Others suggest redefining high latency services to include services with roundtrip

¹⁹ *Id.* at 14.

²⁰ *Id.* at 14, n 52.

²¹ *See e.g.* Comments of the Fiber Broadband Alliance in WC Docket No. 19-126 at 12 (filed Sept. 20, 2019)(suggesting that the Commission adopt a weighting factor of 70 points for baseline low latency services and a weighting factor of 15 for above baseline low latency services); Comments of the Illinois Department of Innovation and Technology in WC Docket No. 19-126 at 7-8 (filed Sept. 20, 2019)(urging the Commission to increase the 90 point spread between the best and least performing tiers, and recommending an accelerated deployment schedule for bidders proposing 25/3 Mbps services in recognition that 25/3 Mbps services will soon be outdated.); Comments of the Institute for Local Self-Reliance in WC Docket No. 19-126 at 3 (filed Sept. 20, 2019)(stating that “[t]he FCC should adopt a baseline tier closer to what Canada has adopted at 50 Mbps download and 10 Mbps uploads,” adding that “[t]his target would still leave rural households at a disadvantage to the vast majority of urban areas, but much less.”) and Comments of the North Dakota Joint Commenters in WC Docket No. 19-126 at 4 (filed Sept. 20, 2019)(proposing that the weighting factors for the Above Baseline tier (100/20 Mbps) be increased from 25 to 50 and that the weighting factors for the Baseline tier (25/3 Mbps) be increased from 50 to 65.)

²² *See* Comments of Adtran at 7-10 (urging the Commission to increase the weighting factor for high latency services from 40 to 50). *See also* Comments of ITTA at 27 (stating that “[t]he Commission should land at a greater spread by assigning a greater weight than 40 to high latency bids.”)

latency of 600 milliseconds or less.²³ Verizon suggested excluding high latency services completely.²⁴ At the same time that comments support increasing the weighting factor for high-latency services, several comments supported establishing a weighting factor that would favor symmetrical speeds. As NRECA explained in its comments, “[s]ymmetrical broadband enables a wider range of online activities that USF-supported Broadband Internet Access Service is intended to promote—distance learning, bandwidth intensive applications that can be performed remotely (advanced data applications such as CAD/CAM and online data analytics), gaming, and advanced communications for anchor institutions.”²⁵ For these reasons, NRECA and other comments supported establishing a weighting factor for symmetrical speeds.²⁶ UTC supports these comments, which are consistent with UTC’s comments on the record.²⁷

III. The Commission Should Allow Utilities to Access RDOF to Promote Broadband Access in States Where They are Restricted from Providing Retail Communications Services.

In the NPRM, the Commission proposes to allow service providers who are not ETCs to apply to bid in the auction, and it also proposes to waive the 180-day deadline for winning bidders to obtain ETC status where long-form applicants demonstrate good faith efforts to obtain their ETC designations, but the

²³ See e.g. Comments of NRECA at i and 7. See also Comments of NTCA at 11 (suggesting that the Commission define high latency as roundtrip latency of 550 milliseconds or less and that the Commission should also “affirm and reaffirm that winning bidders in the higher latency tier must show compliance with latency requirements through the use of an ITU-T Recommendation P.800 conversational-opinion test.”)

²⁴ Comments of Verizon in WC Docket No. 19-126 at 4 (stating that “[t]he Commission should not offer RDOF support for high-latency satellite broadband services, which won about 27 percent of the locations that were awarded support in the 2018 CAF auction.”)

²⁵ Comments of the National Rural Electric Cooperative Association in WC Docket 19-192 at 6 (filed Sept. 20, 2019)

²⁶ NRECA recommended inserting a performance tier for symmetrical speeds of 100/100 Mbps and weighting it at 25 points. See Comments of NRECA at 7. See also Comments of WTA at 11 (stating that “WTA proposes that the Commission initially add a single Symmetric Tier with a required speed of 25/25 Mbps, and give it a substantially more advantageous weight than the Baseline Tier.”)

²⁷ See Comments of UTC at 10, n. 20 (stating that “UTC suggests that the Commission subtract 10 points from the weighting for projects that propose symmetrical speeds. This weighting factor could be applied after the clearing round.”)

ETC proceeding is not complete by the deadline.²⁸ As the Commission noted in the NPRM, this flexibility helped to encourage participation in the CAFII auction by entities such as electric utilities who might otherwise have been hesitant to invest resources in applying for an ETC designation without knowing if they would be likely to win support in the auction.²⁹ Consistent with several comments on the record, UTC recommends that the Commission provide additional flexibility with regard to ETC status.³⁰

Specifically, UTC requests that the Commission eliminate the requirement that RDOF recipients obtain ETC status for utilities that are restricted from providing retail broadband services. For example, Public Utility Districts in the state of Washington are restricted from providing retail telecommunications services by RCW 54.16.330.³¹ Despite this restriction, several of these electric utilities are providing broadband connectivity on a wholesale basis, thereby promoting broadband services by third parties in unserved areas.³² Access to RDOF would help to fund the expansion of their networks in order to promote broadband access in the state of Washington. However, the restriction has prevented them from

²⁸ *NPRM* at ¶91 (stating that “[g]ood faith would be presumed if the long-form applicant filed its ETC application with the relevant authority within 30 days of the release of the public notice announcing winning bidders.”) *See also Id.* at ¶92 (proposing to forgo the statutory requirement that the ETC service area of a Rural Digital Opportunity Fund participant conform to the service area of the rural telephone company serving the same area.)

²⁹ *Id.* at ¶91.

³⁰ *See e.g.* Comments of the Mississippi Public Utility Commission in WC Docket No. 19-126 at 2-3 (filed Sept. 20, 2019)(supporting the Commission’s proposals to seek out the participation of service providers who are not ETCs, including and specifically electric utilities to bid without ETC status.) *See also Id.* (explaining that the Mississippi Broadband Enabling Act was signed into law on January 30, 2019, and it allows the states 25 electric cooperatives – who were formerly restricted under state law from providing retail broadband services – to form broadband entities). *See also* Comments of Frontier Communications Corporation in WC Docket No. 19-126 at 19 (filed Sept. 20, 2019)(arguing that the Commission should eliminate the requirement that price cap carriers provide voice services as part of their ETC obligations in areas where they lose broadband funding support for any period of time.) *and see* Comments of Windstream Services in WC Docket No. 19-126 at 24 (filed Sept. 20, 2019)(arguing that “once a new provider wins support to serve an area, the incumbent ETC [would] no longer [have] a high-cost obligation to offer voice service.”) *See also* Comments of Pacific Dataport, Inc. in WC Docket No. 19-126 at 12 (filed Sept. 20, 2019)(stating that “PDI believes the Commission should relax the requirement that limits eligible providers to Eligible Telecommunications Carriers (“ETCs”), and eliminate the requirement that they be facilities-based providers of “residential terrestrial fixed voice service.”)

³¹ *See* Wash. Rev. Code Ann. §54.16.330 available at <https://apps.leg.wa.gov/RCW/default.aspx?cite=54.16.330>

³² *See* <https://www.wpuda.org/telecommunications>

accessing FCC funding to broadband into unserved areas.³³ Utilities in other states are also restricted from providing retail broadband services.³⁴

There are no reasons to keep utilities sidelined from accessing RDOF to promote broadband access simply because they are subject to state restrictions that prevent them from becoming ETCs. As the Commission has witnessed in CAFII, electric utilities have succeeded in competing for access to broadband funding, winning over \$225 million in support. In many cases, they are using that funding to deploy fiber-to-the-home networks and robust, reliable and affordable broadband services in unserved areas. They helped make the most of the CAFII auction, providing access cost effectively to gigabit networks, which resulted in 53% of all homes and businesses in the auction getting access to download speeds of at least 100 megabits per second and 19% getting access to gigabit services overall.³⁵ Clearly, utilities were a key part of the success of CAFII and they can also help to make RDOF successful too, even if restricted by state law from providing retail services. Given that there is greater funding available under RDOF than ever before and that the term of the funding is proposed to be ten years, RDOF represents a significant opportunity to promote broadband for the next decade. UTC therefore urges the Commission to encourage greater participation from utilities by removing unnecessary barriers to their participation. UTC respectfully requests that the Commission allow utilities that are restricted under state law from providing retail services to be able to access RDOF.

This request is consistent with comments filed on the record. In its comments, NCTA urges the Commission to eliminate the ETC requirement, stating that “[w]hen the focus of the program is on providing broadband to unserved areas, it makes little sense to continue to require providers to be

³³ See Letter from Greg L. Marney, Chief Executive Officer, Northwest Open Access Network to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 (Mar. 7, 2014), available at <https://ecfsapi.fcc.gov/file/7521089303.pdf>.

³⁴ Recently, investor-owned utilities in the state of Virginia were authorized to provide broadband connectivity on a wholesale basis in unserved areas. See Va. Rev. Code. Ann. § 56-585.1:9.

³⁵ See *Connect America Fund Auction to Expand Broadband to over 700,000 Rural Homes and Business*, available at <https://docs.fcc.gov/public/attachments/DOC-353840A1.pdf>.

certified telecommunications carriers.”³⁶ Similarly, the comments by the National Association of Counties, National Association of Development Organizations, and Rural Community Assistance Partnership underscore that “ETC status is important but should not limit connectivity options for unconnected communities.”³⁷ UTC supports the need to ensure that voice services are available in areas where broadband funding is awarded and submits that there are various ways to achieve this objective without requiring winning bidders to obtain ETC status. Therefore, consistent with these comments on the record, UTC respectfully requests that the Commission allow utilities to access RDOF support even if they are not able to obtain ETC status due to state restrictions that prevent them from providing retail services.

WHEREFORE, the premises considered, UTC respectfully requests that the Commission adopt rules for the Rural Digital Opportunity Fund that are consistent with these reply comments.

Respectfully,

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³⁶ Comments of NCTA – The Internet and Television Association in WC Docket No. 19-126 at 6 (filed Sept. 20, 2019).

³⁷ Comments of the National Association of Counties, the National Association of Development Organizations, and the Rural Community Assistance Partnership in WC Docket No. 19-126 at 2 (filed Sept. 20, 2019).