

**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

**COMMENTS OF ACA CONNECTS – AMERICA’S COMMUNICATIONS ASSOCIATION
ON THE NOTICE OF PROPOSED RULEMAKING**



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I. INTRODUCTION AND SUMMARY

ACA Connects – America’s Communications Association (“ACA Connects”)¹ hereby comments in response to the Notice of Proposed Rulemaking (“*NPRM*”) regarding the establishment of the Rural Digital Opportunity Fund (“RDOF”).² ACA Connects supports the Commission’s plan to commit at least \$20.4 billion over ten years to support the deployment of high-speed broadband networks in unserved areas.³ Targeting RDOF support to broadband

¹ ACA Connects’ membership is made up of nearly 800 small- and medium-size independent operators providing video, broadband, and phone services. See ACA Connects, “About ACA Connects,” available at <https://www.acaconnects.org/about> (last accessed Sep. 18, 2019). ACA Connects’ members serve over 7 million households and businesses, mainly in rural areas. These members invest billions annually to upgrade their networks to provide high-speed, affordable broadband services to their customers. Many ACA Connects members are located near proposed RDOF eligible areas or otherwise have expressed interest in participating in the RDOF auction.

² *Rural Digital Opportunity Fund, Connect Am. Fund*, WC Docket Nos. 19-126, 10-90, Notice of Proposed Rulemaking, FCC 19-77 (Aug. 2, 2019) (“*NPRM*”).

³ See Letter from Thomas Cohen, Counsel for ACA Connects, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 19-195, 19-126, 11-10, 10-90, 1 (July 24, 2019) (supporting prompt adoption and implementation of the RDOF) (“ACA Connects July 2019 Ex Parte”); Letter from Thomas Cohen, Counsel for ACA Connects, to Marlene H. Dortch,

services offering higher speeds, higher usage allowances, and lower latencies will help spur the development of broadband networks that can keep pace with growing consumer demands and provide rural residents, businesses, and community anchor institutions in those unserved areas the tools necessary to participate fully in the 21st century economy and society.⁴

The RDOF represents the “single biggest step yet to close the rural digital divide” and is the logical follow-up to the Connect America Fund (“CAF”) Phase II auction that concluded last year.⁵ The CAF Phase II auction demonstrated that using competitive bidding to award high-cost support leads to the delivery of higher-performance broadband to unserved areas far more cost-effectively than relying on the Connect America Cost Model (“CAM”).⁶ If properly structured and implemented, the RDOF can build on the successes of CAF Phase II while addressing its shortcomings. In particular, it is vital in light of the lengthy (10-year) support term

Secretary, Federal Communications Commission, WC Docket No. 19-126, 1 (June 14, 2019) (same) (“ACA Connects June 2019 Ex Parte”).

⁴ See Letter from Ross J. Lieberman, Senior Vice President of Government Affairs, ACA Connects, Michael R. Romano, Senior Vice President – Industry Affairs & Business Development, NTCA – The Rural Broadband Association, and Brian M. O’Hara, Senior Director Regulatory Issues – Telecom & Broadband, National Rural Electric Cooperative Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dockets No. 19-126, 11-10, 1 (May 9, 2019).

⁵ *NPRM* at para. 4. See *Connect Am. Fund Phase II Auction (Auction 903) Closes, Winning Bidders Announced*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 33 FCC Rcd 8257 (2018) (“*CAF Phase II Auction Close Notice*”).

⁶ *Connect Am. Fund Phase II Auction Scheduled for July 24, 2018, Notice and Filing Requirements and Other Procedures for Auction 903*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 33 FCC Rcd 1428, paras. 210-211 (2018) (“*2018 CAF Phase II Notice*”). See Statement of Chairman Ajit Pai, Federal Communications Commission, Hearing on Oversight of the Federal Communications Commission, Before the United States Senate Committee on Commerce, Science, and Transportation, 1 (June 12, 2019), available at <https://www.fcc.gov/document/chairman-pais-testimony-senate-commerce-committee> (last accessed Sep. 18, 2019) (“The outcome of the auction was a tremendous success. We distributed funding much more efficiently thanks in part to intermodal, competitive bidding, saving \$3.5 billion from the \$5 billion price we initially thought would be required to connect these unserved areas.”) (“Pai Testimony”).

proposed in the *NPRM* for the RDOF that the Commission adopt rules that account fully for the benefits of higher-performance broadband networks which consumers will require.

In these comments, ACA Connects provides the following recommendations to maximize auction participation and improve the overall structure and implementation of the RDOF. First, the Commission should adjust its performance tier bid weighting methodology and establish the census block as the minimum geographic bidding unit to maximize participation in the RDOF auction. Second, the Commission should increase service provider performance requirements over time to ensure rural consumers receive “reasonably comparable” services to their urban counterparts and adopt a limited subscribership target to incentivize customer signups. Third, the Commission should determine the areas eligible for RDOF Phase I funding without delay based on existing deployment data, hold off on lowering the current high-cost threshold, and establish safeguards to prevent overbuilding. Fourth, despite its flaws, the Commission should use the CAM to establish reserve prices for the areas eligible for RDOF Phase I support as it remains the most objective measure of per location service cost available today. Fifth, the Commission should lower the RDOF short-form application requirements in certain circumstances for existing providers, which already demonstrated a track record of providing quality service to consumers. Sixth, the Commission should provide limited additional support to price cap carriers that accepted CAF Phase II model-based funding in relevant areas to ensure consumers retain access to supported services while the RDOF is implemented. Finally, the Commission should adopt principles to facilitate state broadband program engagement while ensuring support is allocated in a transparent and efficient manner.

II. THE COMMISSION CAN MAXIMIZE PARTICIPATION IN THE RDOF AUCTION BY ADJUSTING ITS PERFORMANCE TIER BID WEIGHTING METHODOLOGY AND MINIMUM GEOGRAPHIC BIDDING UNIT

The Commission should foster robust auction competition by maximizing participation to achieve its goals for the RDOF. The Commission plans to use a reverse auction mechanism

similar to that employed in CAF Phase II to determine RDOF winning bidders and support amounts.⁷ As in CAF Phase II, the Commission would require RDOF auction participants to bid at specified performance and latency tiers, which each carry an associated weight.⁸ The Commission intends to use the same Baseline, Above Baseline, and Gigabit performance tiers (as well as the same high and low latency tiers) used in CAF Phase II for the RDOF auction.⁹ The Commission also intends to eliminate the CAF Phase II Minimum performance tier and slightly increase the weights applied to the RDOF Baseline and Above Baseline tiers by 5 and 10 points, respectively, to create a 90-point spread between the highest and lowest performing tiers.¹⁰ However, the Commission asks whether it should increase the spread “[t]o encourage the deployment of higher speed services, and in recognition that terrestrial fixed networks may serve as a backbone for 5G deployments.”¹¹ In addition, the Commission plans to establish census block groups as the minimum geographic unit for bidding for the RDOF auction.¹² Both high-cost census blocks and extremely high-cost census blocks would be included in the census block groups bid on at the RDOF auction under the Commission’s proposal.¹³

ACA Connects supports the use of a reverse auction to determine RDOF winning bidders and support amounts.¹⁴ Last year’s CAF Phase II auction distributed high-cost support

⁷ *NPRM* at para. 19.

⁸ *Id.* at para. 23.

⁹ *Id.*

¹⁰ *Id.* at paras. 24-25.

¹¹ *Id.* at para. 25.

¹² *Id.* at para. 21.

¹³ *Id.* at para. 50.

¹⁴ Reverse auctions are a simple price discovery process, with bidding strategy consisting of estimating the cost of providing service and then exiting the auction when this cost is reached. Such auctions are highly transparent; the rules are clear and it is easy to see why a bidder won or lost at a specified price. In addition, these auctions are fair, with every potential bidder facing the same rules. Finally, these auction are efficient and maximize total surplus. See Reply

more efficiently when compared to the CAM and spurred the deployment of higher-performing broadband services.¹⁵ Despite these successes, however, the CAF Phase II auction had significant shortcomings that deterred participation, limited competition, and reduced the overall cost-effectiveness of the program. First, the Commission's performance tier bid weighting methodology unduly favored service providers relying on lower-performance tiers (technologies) while discouraging bidding in higher-performance tiers. Second, the Commission's use of census block groups as the minimum geographic bidding unit deterred participation by, among others, smaller cable operators and rural telephone providers. ACA Connects therefore recommends that the Commission maximize participation in the RDOF auction by adjusting its proposed performance tier bid weighting methodology to be more technology-neutral and establishing the census block as the minimum geographic bidding unit.

A. The Commission Should Adjust its Proposed Performance Tier Bid Weighting Methodology

The Commission should apply the lessons learned from CAF Phase II and adjust the proposed RDOF performance tier bid weighting methodology to ensure it maximizes participation by service providers across all performance tiers. To ensure maximum participation, a weighting methodology should account for the fact that service providers only will participate in an auction if they have a reasonable chance of winning.¹⁶ Participation in a Commission auction, no matter how streamlined, requires significant upfront outlays of time,

Comments of the American Cable Association in Response to the Public Notice, AU Docket No. 17-182, WC Docket No. 10-90, 3-4, n. 10 (Oct. 18, 2017).

¹⁵ The winning bids for the CAF Phase II auction totaled far less (\$1.49 billion), than the estimated reserve price based on the CAM (\$5 billion). See *CAF Phase II Auction Close Notice* at para. 1. In addition, winning bidders in CAF Phase II committed to serve 713,176 homes and small businesses, with virtually all locations receiving broadband service at speeds of 25/3 Mbps or higher. *Id.* at Attachment A. By contrast, service providers receiving CAM-based support not only received more funding, but only were required to provide service at 10/1 Mbps.

¹⁶ ACA Connects July 2019 Ex Parte at 4.

administrative resources, and money. Service providers can justify such expenditures only if the potential benefits from auction participation are substantial and realistic. Otherwise, auction participation just diverts often limited resources away from planned network expansions and upgrades. Thus, a successful Commission weighting methodology must encourage significant and proportional participation by service providers across all performance tiers.

The Commission plans to adopt a 90-point bid weight spread between a service offering Gigabit speeds/low latency and a service offering Baseline speeds/high latency.¹⁷ But the Commission provides no evidence in the *NPRM* or elsewhere that this spread will make bidding more technology-neutral than alternative weighting methodologies or that this spread will maximize RDOF auction participation by service providers across all performance tiers. Indeed, record evidence indicates that the Commission's proposed spread will deter participation by some service providers. Unlike others, ACA Connects examined the Commission's performance tier bid weighting methodology in depth and provided its analysis during the CAF Phase II proceeding.¹⁸ This analysis showed that significant adjustments to the Commission's methodology are necessary to maximize service provider participation across all performance tiers.¹⁹

In its analysis, ACA Connects first modeled the cost to serve for technologies at each performance tier and then applied the Commission's proposed weighting methodology to each technology in each eligible census block to determine the weighted cost-effectiveness ratio for

¹⁷ *NPRM* at para. 25.

¹⁸ See Letter from Thomas Cohen, Counsel for the American Cable Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90, Appendix I (Feb. 17, 2017) ("ACA Connects Analysis"); see also *NPRM* at para. 27 (asking commenters recommending alternative bid weighting methodologies to "explain how their proposal will balance the objectives of maximizing our limited budget and guarding against widening the digital divide").

¹⁹ See ACA Connects July 2019 Ex Parte at 4; ACA Connects June 2019 Ex Parte at 4-5.

all potential bids.²⁰ ACA Connects then looked at the distribution of bids across all census blocks under the Commission's methodology and evaluated where each technology fell across the range of cost-based bids.²¹ This approach allowed ACA Connects to forecast which technologies bidders would use under the Commission's methodology and, among those technologies, which were best positioned to win.²²

The ACA Connects analysis revealed that the Commission's proposed weights, which it amended to a minor degree in the final CAF Phase II auction, favored bidding for certain lower-performing tiers and deterred bidding for higher-performing tiers.²³ As part of its analysis, ACA Connects proposed its own performance tier bid weighting methodology. ACA Connects' approach differed from the approach taken by the Commission by, among other things, significantly increasing the weights assigned to the lowest performing tiers.²⁴ The analysis demonstrated that, unlike the Commission's approach, ACA Connects' methodology would enable bidders across all tiers to have a reasonable chance of winning at auction, encourage greater participation, and maximize the overall cost-effectiveness of the program.²⁵

The results of the CAF Phase II auction showed that ACA Connects' analysis was prescient. Most locations served by CAF Phase II auction winners will receive Baseline performance services.²⁶ Moreover, while 19 percent of eligible locations will receive Gigabit

²⁰ ACA Connects Analysis at 3. ACA Connects' analysis leveraged a comprehensive dataset that accounted for the significant variability in deployment costs from housing density. *Id.* at 2.

²¹ *Id.* at 3-5.

²² *Id.* ACA Connects' analysis looked at the median 80 percent of bids. This allowed the analysis to control for any "long tail" effects caused by outliers. *Id.* at 5, n. 12.

²³ *Id.* at 8.

²⁴ *Id.* at 4.

²⁵ *Id.* at 9. In addition, ACA Connects' methodology would result in the funding of all eligible areas within the CAF Phase II budget, assuming only that all auction participants bid at their cost to serve. *Id.*

²⁶ See *CAF Phase II Auction Close Notice* at Attachment A.

performance, the vast majority of these are located in areas served by electric cooperatives, which have uniquely lower service costs than other providers that are not already present in the area.²⁷ Consequently, by discouraging participation across performance tiers at auction, the Commission's weighting methodology reduced inter-tier competition, decreased the overall cost-effectiveness of the CAF Phase II program, and undermined the opportunity for consumers in unserved areas to receive higher-performance broadband service.²⁸

The Commission can address the shortcomings of its proposed auction framework by using ACA Connects' weighting methodology to ensure bidding maximizes service provider participation. First, the Commission should widen the spread between the highest and lowest performing tiers by significantly raising the weight associated with the RDOF Baseline performance tier beyond the relatively minor five percent increase proposed in the *NPRM*. Based on its analysis, ACA Connects recommends that the Commission increase the weight assigned to the RDOF Baseline performance tier to around 75 percent, which will better level the playing field between the highest and lowest performance tiers at auction. Second, ACA Connects recommends that the Commission increase the weight assigned to the RDOF Above Baseline performance tier to around 35 percent, which will advance the Commission's

²⁷ *Id.*

²⁸ The limited funding made available for the CAF Phase II auction engendered concern that the more locations served by higher-price Gigabit services would lead to a shortage of funds made available for other areas. See, e.g., *Connect Am. Fund, et al.*, WC Docket No. 10-90, *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949 (2016) (statement of Commissioner Michael O'Rielly Approving in Part and Dissenting in Part) (stating that the Commission's approach undercut "the effort to connect the maximum number of people with the limited dollars available" and that the Commission should focus on "buy[ing] fewer Lamborghinis and more Chevys" when it comes to allocating support for broadband services) ("*2016 CAF Phase II Order*"). As the \$20.4 billion overall budget proposed in the *NPRM* is much greater than the \$1.98 billion in support made available in the CAF Phase II auction, concerns about potential funding shortages are not as big of an issue for the RDOF.

preference for rewarding high-speed, “future-proof” broadband services at auction.²⁹ These weight adjustments will increase participation at the RDOF auction, spur robust competitive bidding, and result in the most efficient use of Commission support.³⁰ The following table compares the Commission’s proposed performance tier bid weighting methodology for the RDOF and ACA Connects’ recommended approach:

Performance Tier	Proposed Weight (Commission)	Proposed Weight (ACA Connects)	Difference
Baseline	50	75	+25
Above Baseline	25	35	+10
Gigabit	0	0	0

B. The Commission Should Establish the Census Block as the Minimum Geographic Bidding Unit

Establishing the census block as the minimum geographic bidding unit for the RDOF auction would further maximize participation by service providers, increasing competition and the overall cost-effectiveness of the program. As with CAF Phase II, the Commission proposes

²⁹ See *NPRM* at para. 25. The zero percent weight assigned to the Gigabit performance tier would remain unchanged. *Id.* In addition, the current weights assigned to the low and high latency tiers would remain at 0 and 40 percent respectively. *Id.*

³⁰ The Commission also could account for the important role upload speeds play in enabling real-time applications by creating additional performance tiers for the RDOF auction to promote broadband services offering symmetrical upload/download speeds. Real-time applications such as video conferencing, interactive learning, gaming, and medical services depend upon robust upload speeds. Federal Communications Commission, Office of Engineering and Technology, “Broadband Service for the Home: A Consumer’s Guide,” available at <https://www.fcc.gov/research-reports/guides/broadband-service-home-consumers-guide> (last accessed Sep. 18, 2019). See Letter from Thomas Cohen, Counsel for the American Cable Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90, 6-7 (Jan. 30, 2017) (stating that real-time applications dependent on fast upload speeds “include advanced collaboration platforms with instant document sharing, online interactive lessons and classrooms, remote check-ups, and virtual-reality training programs”) (“ACA Connects January 2017 Ex Parte”). Should the Commission adopt this approach, ACA Connects recommends that it establish the following performance tiers and associated bid weights: (1) Gigabit Symmetrical – 0 percent; (2) Gigabit Non-Symmetrical – 10 percent; (3) Above Baseline Symmetrical – 25 percent; (4) Above Baseline Non-Symmetrical – 35 percent; (5) Baseline (Symmetrical and Non-Symmetrical) – 80 percent.

using census block groups as the RDOF minimum geographic bidding unit.³¹ The Commission also asks whether even larger units, such as census tracts or counties, would be appropriate in light of the fact that the RDOF auction will be bigger than its CAF Phase II counterpart.³² In addition, the Commission seeks input on whether there are alternative, “more efficient ways to group census blocks for purposes of the auction.”³³ ACA respectfully submits that the Commission’s plan to use census block groups or a larger area as the minimum bidding unit is imprudent and will discourage RDOF auction participation by service providers that cannot make the business case for bidding for census block groups that include some eligible census blocks which they deem economic to serve and others which they deem uneconomic to serve (in effect, a forced, inefficient cross-subsidy).

During the CAF Phase II proceeding, ACA Connects informed the Commission that its members who were considering participating in the auction found that, “although many census blocks may be economically viable, the census block groups – in which these blocks are found – often are not.”³⁴ ACA Connects therefore advised that a census block, not a census block group, should be minimum geographic bidding unit at auction.³⁵ ACA Connects’ recommendation was widely supported, including by NTCA, NRECA, the Utilities Technology Council, and numerous electric cooperatives.³⁶ However, the Commission did not adopt this

³¹ *NPRM* at para. 21.

³² *Id.*

³³ *Id.*

³⁴ Letter from Thomas Cohen, Counsel for the American Cable Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, AU Docket No. 17-182, WC Docket No. 10-90, 2 (Nov. 21, 2017) (“ACA Connects November 2017 Ex Parte”). See ACA Connects June 2019 Ex Parte at 3.

³⁵ ACA Connects November 2017 Ex Parte at 2.

³⁶ See, e.g., Letter from Rebekah P. Goodheart, Counsel for the Association of Missouri Electric Cooperatives, *et al.*, to Marlene H. Dortch, Secretary, Federal Communications Commission, AU Docket No. 17-182, WC Docket No. 10-90 (Jan. 24, 2018).

approach because, as ACA Connects understood its reasoning at the time, it would require substantial upgrades to Commission auction software and thereby delay the auction. After the conclusion of the CAF Phase II auction, ACA Connects heard from many of its members that they, in fact, did not participate because the census block group bidding requirement would have forced them to pair economic and uneconomic census blocks. Accordingly, CAF Phase II auction participation was not maximized and the resulting winning bids were not the most cost-effective use of Commission support.

ACA Connects recommends that the Commission apply the lessons learned in CAF Phase II and establish the census block as the minimum geographic bidding unit for the RDOF auction. This approach will enable service providers to bid for those eligible census blocks that they believe they can serve economically rather than forcing them to walk away because they must link that bid with an uneconomic build in another eligible census block.³⁷ Under ACA Connects' proposal, many more services providers would likely participate in the RDOF auction and potentially win support – more cost-effectively.

ACA Connects understands that the minimum geographic bidding unit for an auction must be large enough “to facilitate a viable aggregation of geographic areas in which to construct networks.”³⁸ However, ACA Connects submits that the Commission can still achieve benefits of scale by allowing service providers to package bids for multiple census blocks during the RDOF auction.³⁹ The participants in the RDOF auction “are best able to identify the areas where they could deploy broadband-capable networks” and allowing census block bidding (with the option to package bids) would reinforce the Commission’s deference to service providers in

³⁷ ACA Connects July 2019 Ex Parte at 3.

³⁸ *2016 CAF Phase II Order* at para. 88.

³⁹ ACA Connects June 2019 Ex Parte at 4. See ACA Connects November 2017 Ex Parte at 2.

the development of their bidding strategies.⁴⁰ With the RDOF auction likely a year away, there is no reason why the Commission would not have enough time to upgrade its software to handle bids by individual census blocks. The one-time cost associated with such upgrades should not prevent the Commission from achieving the clear long-term benefits of achieving more cost-effective results.⁴¹

The Commission's proposed inclusion of extremely high-cost locations in the RDOF auction will only exacerbate the problem of using census block groups as the minimum geographic unit of bidding.⁴² This will be the case even if the Commission does not raise the reserve price associated with census blocks with extremely high-cost locations⁴³ because auction participants can only be expected to bid based on their cost to serve and, as the name indicates, extremely high-cost locations are more likely to be uneconomic to serve.⁴⁴

III. THE COMMISSION SHOULD INCREASE SERVICE PROVIDER PERFORMANCE REQUIREMENTS OVER TIME AND ADOPT A LIMITED SUBSCRIBERSHIP TARGET

The Commission should require RDOF support recipients to increase their performance speeds and monthly usage allowances over time to make sure consumers in eligible areas receive services "reasonably comparable" to those available to their urban counterparts over the 10-year life of the program. One of the foundational principals of the Universal Service Fund is that high-cost support recipients must provide services "that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably

⁴⁰ *NPRM* at para. 50.

⁴¹ ACA Connects June 2019 Ex Parte at 4.

⁴² *NPRM* at para. 50.

⁴³ *Id.* at para. 56.

⁴⁴ ACA Connects does not oppose the inclusion of extremely high-cost census blocks in the RDOF to target support to the hardest-to-serve areas, but only if the Commission allows bidding by individual census blocks. Otherwise, the Commission should exclude extremely high-cost census blocks from the areas made available for auction to maximize participation by service providers of all sizes.

comparable to rates charged for similar services in urban areas.”⁴⁵ The Commission notes that following this principle “means continually assessing the need to support services that compare to the ever-improving standard of advanced services in urban areas.”⁴⁶ Increasing RDOF performance requirements on a set schedule thus will ensure that supported services keep pace with urban offerings and avoid widening the digital divide over the next decade. ACA Connects urges the Commission to increase the performance requirements imposed on RDOF winning bidders in year four and year eight of support to meet the comparable service speeds and data allowances offered in urban areas. At the same time, the Commission should adopt a subscribership target for RDOF winning bidders, although one below that proposed in the *NPRM* to account for market realities and other available safeguards.

As the Commission highlights in the *NPRM*, consumer demand for high broadband speeds and usage allowances rose precipitously in recent years and shows no signs of stopping.⁴⁷ Thus, while the CAF Phase II framework provides a good foundation, the performance obligations imposed on RDOF winning bidders must account for current consumer needs. Today’s consumers use vast amounts of data, driven largely by consumption of bandwidth-intensive video applications. With a plethora of smartphones, tablets, gaming consoles, and other data-hungry products now available, there are approximately eight connected devices per person in the United States – a number expected to climb to 13.6 devices per person by 2022.⁴⁸ Using these devices, the average U.S. household now consumes over 268 GB per month, with over four percent of households already consuming

⁴⁵ 47 U.S.C. § 214(b)(3).

⁴⁶ *NPRM* at para. 18.

⁴⁷ *Id.* at para. 14.

⁴⁸ See NCTA, “IoT Has Quietly and Quickly Changed Our Lives” (Feb 1, 2019), available at <https://www.ncta.com/whats-new/iot-has-quietly-and-quickly-changed-our-lives> (last accessed Sep. 18, 2019).

more than one TB per month.⁴⁹ Moreover, recent speed test data from Ookla demonstrated that U.S. fixed broadband speeds were 96.25/32.88 on average in 2018.⁵⁰

These data demonstrate 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.⁵¹ This discrepancy will only be greater by the time the RDOF auction begins and when deployments actually occur.⁵² Without a mechanism to periodically update performance requirements, the RDOF will not provide long-term value to consumers in rural and other hard-to-serve areas. Consequently, ACA Connects recommends that the Commission increase the performance requirements imposed on RDOF winning bidders in year four and year eight of support to meet the comparable speeds and data allowances provided in urban

⁴⁹ See Phil Britt, “Report: U.S. Household Broadband Data Consumption Hit 268.7 Gigabytes in 2018,” telecompetitor (Jan. 22, 2019), available at <https://www.telecompetitor.com/report-u-s-household-broadband-data-consumption-hit-268-7-gigabytes-in-2018> (last accessed Sep. 18, 2019). Customers that do not bundle their cable service with their broadband service consume even more data per month on average. See Daniel Frankel, “Charter: Broadband-Only Users Average 400GB of Monthly Data Usage,” Multichannel News (May 2, 2019), available at <https://www.multichannel.com/news/charter-says-average-cord-cutter-uses-400gb-of-data-per-month> (last accessed Sep. 18, 2019).

⁵⁰ See “Fixed Broadband Speedtest Data, Q2-Q3 2018 United States,” Ookla (Dec. 12, 2018), available at <https://www.speedtest.net/reports/united-states/2018/#fixed> (last accessed Sep. 18, 2019).

⁵¹ *NPRM* at para. 25.

⁵² Indeed, the proposed Baseline performance tier is better characterized as a “Minimum” service standard. Accordingly, the Commission could consider eliminating the proposed Baseline performance tier entirely and require RDOF auction participants to bid solely at the Above Baseline and Gigabit performance tiers. The data make clear that the Baseline performance tier offers below-average service at the national level and may provide only marginal gains in rural areas. As an example, a rural area currently receiving 24/3 Mbps broadband service would be included in the RDOF. But if the winning service provider for that area only committed to provide Baseline performance, the marginal benefit to consumers would be so minimal as to undercut the purpose of the Commission providing support. By contrast, the Above Baseline and Gigabit performance tiers will better match consumer broadband demands over the ten-year RDOF support term. If the Commission elects to eliminate the Baseline performance tier, it should reassess the weighting methodology used for the Above Baseline and Gigabit performance tiers to maximize participation by all service provider types. See *supra* Section II.A.

areas.⁵³ Updating the performance requirements in those two years makes sense given how quickly broadband performance is evolving.⁵⁴ The performance requirement update mechanism also will allow the Commission to check in on how RDOF support is being used during the deployment process and before the support term ends.⁵⁵

In order to be successful, the performance requirement update mechanism adopted by the Commission must be fair and reasonable to implement. During the CAF Phase II proceeding, the Commission recognized that competitive bidding is likely to be more efficient if potential auction participants have a sense of what their performance obligations will be over the length of the support term.⁵⁶ As a result, it set out a mechanism for determining the broadband performance requirements of winning bidders by the end of the ten-year term.⁵⁷ Specifically, the Commission would update the broadband performance requirement “based on the highest speed adopted by a majority of households, as reported in the most recent Form 477 data

⁵³ The Commission has previously recognized the merits of a performance requirement update mechanism. When it established a 10/1 Mbps minimum performance standard for price cap carriers accepting CAF Phase II model-based support in 2014, the Commission asserted that the minimum standard “should not be our end goal for recipients of support over a ten-year term.” *Connect Am. Fund, et al., WC Docket No. 10-90, et al., Report and Order, 29 FCC Rcd 15644, para. 29 (2014) (“2014 CAF Phase II Order”)*. Thus, the Commission stated that recipients of CAF Phase II funding later awarded at auction should be required to meet “an evolving broadband speed standard.” *Id.* Although the Commission subsequently adopted set performance requirements for CAF Phase II auction winning bidders, it nevertheless stated that it expected service providers “to innovate and provide better service over the 10-year term.” *2016 CAF Phase II Order at para. 14.*

⁵⁴ The Commission also should consider whether adjustments to the latency requirements need to be made at these times. High latency detrimentally affects the quality of real-time applications critical to gaming, e-learning, and telehealth services. See ACA Connects January 2017 Ex Parte at 6-7. Thus, the Commission should ensure that the latency requirements imposed on RDOF winning bidders maintain comparability to urban service offerings.

⁵⁵ While the performance requirement adjustment mechanism likely would impact Baseline tier service providers sooner and more often than Above Baseline and Gigabit tier service providers, the point of the mechanism is to ensure scalability of service performance regardless of the underlying technology used.

⁵⁶ *2014 CAF Phase II Order at para. 29.*

⁵⁷ *Id.*

available at the time.”⁵⁸ ACA Connects recommends that the Commission adopt a similar mechanism for the RDOF. First, the Commission would issue a public notice in year four and year eight of RDOF setting forth the proposed updated performance requirements based on the most recent Form 477 data or the successor data collection implemented as part of the ongoing Digital Opportunity Data Collection (“DODC”) proceeding.⁵⁹ The public notice would be subject to public notice and comment, with stakeholders provided with the opportunity to challenge the comparability of the new requirements to the services offered in urban areas. Based on this input, the Commission would announce the new performance requirements through a subsequent public notice. Any service provider able to show good cause why it cannot or should not meet the new performance requirements could ask the Commission for a waiver through the existing petition process.⁶⁰ Increasing service provider performance requirements over time through this proposed mechanism will help ensure that “reasonable comparability” remains a bedrock of the Commission’s high-cost programs and consumers receive broadband services from the RDOF meeting their present (and future) needs.

ACA Connects also supports adoption of a limited subscribership target for RDOF winning bidders. The Commission contends that subscribership targets may be necessary to create sufficient incentives for RDOF support recipients to sign up customers in eligible areas.⁶¹ The Commission therefore proposes conditioning a portion of RDOF funding on service providers meeting a series of escalating subscribership targets – culminating in a 70 percent

⁵⁸ *Id.*

⁵⁹ See *Establishing the Digital Opportunity Data Collection, Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195, 11-10, Report and Order and Second Further Notice of Proposed Rulemaking, FCC 19-79 (Aug. 6, 2019) (“*DODC Order/FNPRM*”).

⁶⁰ See 47 C.F.R. § 1.3.

⁶¹ *NPRM* at para. 40.

target for year six of support.⁶² ACA Connects appreciates the importance of making sure that the networks constructed using RDOF support actually work in the “real world.” However, the proposed 70 percent subscribership target is far above what would be expected in most markets and other safeguards in the *NPRM* may help address the Commission’s subscribership concerns.

The RDOF performance tier bid weighting methodology, combined with the performance requirement update mechanism recommended by ACA Connects above, will give potential bidders a good sense of the broadband service speeds and usage allowances they will need to provide over the length of the support term. By contrast, subscribership levels will be harder to predict and can vary considerably based on a number of external factors (e.g., area income, short-term migration levels, and general interest in broadband subscription), justifying greater flexibility in setting a subscribership target. In discussions with its members, ACA Connects found that a 70 percent subscribership target would be hard to achieve even if the RDOF winning bidder is the only service provider in an area. As a consequence, the Commission should lower its proposed 70 percent subscribership target to better reflect market realities.

The consumer outreach and other proposed requirements in the *NPRM* may lessen the Commission’s subscribership concerns. For example, the *NPRM* would require RDOF support recipients to provide service within 10 business days of receiving a request from a consumer to count the location as served.⁶³ The Commission also plans to require RDOF support recipients to advertise the availability of their services throughout the areas won at auction.⁶⁴ These proposed outreach requirements, combined with the revenue obtained from additional

⁶² *Id.*

⁶³ *Id.* at para. 28.

⁶⁴ *Id.*

subscribers, should provide additional incentives for service providers to sign up customers in their service areas.

Adoption of these safeguards would lessen the need to impose a high subscribership target. ACA Connects therefore recommends that the Commission adopt a presumption that RDOF support recipients with a six-year subscribership below a certain target (*e.g.*, 35 percent) would be subject to further Commission inquiry to assess how the funding is being used. By establishing a workable subscribership target that favors fact-gathering over withholding funding, the Commission can ensure that the networks constructed with RDOF support are used to provide service to consumers without holding service providers to an impractical standard.⁶⁵

IV. THE COMMISSION SHOULD DETERMINE THE AREAS ELIGIBLE FOR RDOF PHASE I FUNDING BASED ON EXISTING DATA, HOLD OFF ON LOWERING THE HIGH-COST THRESHOLD, AND PREVENT OVERBUILDING

The Commission should determine the areas eligible for RDOF Phase I support without delay based on currently-available data and only consider lowering the high-cost threshold in later rounds to provide funding to areas where potential end-user revenue alone has not sufficiently incentivized deployment. The Commission also should ensure that RDOF funding is not used to overbuild existing networks already meeting its broadband performance standards.

ACA Connects supports the Commission's proposal to define the areas eligible for RDOF support as those locations lacking broadband service at 25/3 Mbps speeds, which is the

⁶⁵ ACA Connects notes that a subscribership target is a relatively blunt instrument to ensure RDOF support recipients have sufficient incentive to sign up subscribers in all of the locations won at auction. For example, a subscribership target could make lower-income areas less attractive to bid on because service providers may be unable to find enough customers willing to purchase broadband services. Thus, the Commission should consider how best to address broadband adoption issues in conjunction with a subscribership target to ensure consumers are able to take advantage of the networks built with RDOF support.

Commission's current fixed broadband performance benchmark.⁶⁶ ACA Connects also supports the Commission's plan to disburse RDOF support in two stages, with \$16 billion targeted to wholly unserved census blocks in RDOF Phase I and \$4.4 billion (plus any un-awarded funding from RDOF Phase I) targeted to partially unserved census blocks in RDOF Phase II.⁶⁷ The Commission's projected two-stage approach will ensure RDOF funding is first aimed at the areas that need it most while it works to obtain more granular broadband deployment information to guide RDOF Phase II through its ongoing DODC proceeding.

ACA Connects submits that the Commission should use the most recent Form 477 data, combined with a robust challenge process similar that employed in CAF Phase II, to determine the census blocks eligible for RDOF Phase I support.⁶⁸ ACA Connects appreciates that numerous proposals currently exist to collect more granular broadband deployment data to better target the distribution of RDOF support. However, none of these proposals is going to be implemented soon – certainly not within the next year when it would be time to move forward with RDOF Phase I.⁶⁹ Longer-term efforts to improve the accuracy of broadband deployment

⁶⁶ *Id.* at para. 45. See *Inquiry Concerning Deployment of Advanced Telecomms. Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket No. 18-238, 2019 Broadband Deployment Report, 34 FCC Rcd 3857, para. 12 (2019).

⁶⁷ *NPRM* at para. 45. By establishing a program budget significantly below the aggregate reserve price for the areas ultimately deemed eligible for RDOF funding, the Commission will foster robust inter-area competition, which will lead to higher-performing broadband services provided at lower costs in the areas receiving winning bids. As the Commission emphasizes in the *NPRM*, much of the bidding in the CAF Phase II auction was driven by such inter-area competition and it should aim for a similar result with the RDOF. *Id.* at para. 17. In addition, the fact that any support un-awarded in RDOF Phase I will roll over to RDOF Phase II also militates in favor of ensuring there is adequate inter-area competition in Phase I, so that the bulk of support goes to areas deemed wholly unserved by the Commission.

⁶⁸ *NPRM* at para. 44.

⁶⁹ As the Commission notes in the *NPRM*, more granular deployment data already are available for price cap carriers in areas where they received model-based support. *Id.* at para. 49. ACA Connects therefore supports the Commission's proposal to treat such price cap carriers differently for the purposes of determining the areas eligible for RDOF Phase I support by including those census blocks where the carrier is the only provider reporting deployment of 25/3 Mbps broadband service, but has not deployed such service to all locations in such blocks.

data, while important, should not prevent the Commission from finalizing the auction procedures for RDOF Phase I. As the Commission notes, there is no alternative source to the Form 477 of publicly-available nationwide broadband coverage information.⁷⁰ As a result, delaying the RDOF Phase I auction to assess more granular broadband deployment data gathering options “would only punish those millions of Americans that we know do not have access to digital opportunity.”⁷¹ Moreover, even with the more granular broadband deployment data collection proposals currently on the table, it will be difficult to ensure that the information accurately reflects all served and unserved locations, particularly for providers using network technologies where coverage and performance can be highly variable. Thus, even in the long run, a challenge process appears necessary to ensure deployment data are accurate.⁷² The Commission therefore should determine the areas eligible for RDOF Phase I support without delay based on currently-available Form 477 data and provide a robust challenge process to check the data’s accuracy.⁷³

Id. To avoid discouraging already-planned network improvements, the Commission should provide carriers the opportunity to identify the locations that will be upgraded to Baseline service prior to the RDOF Phase I auction, which would be excluded from the auction. *Id.* at para. 49, n. 96. Any areas that are not upgraded as planned would be rolled over to RDOF Phase II.

⁷⁰ *Id.* at para. 45, n. 83.

⁷¹ *Id.*

⁷² By basing the areas eligible for funding on existing data, the RDOF Phase I challenge process would be more straightforward than one based on new, more granular deployment information. ACA Connects recommends that the Commission further streamline the RDOF Phase I challenge process by limiting challenges to the question of whether potentially eligible unserved areas (as determined by the Commission) are in fact served by Baseline service. This approach would prevent challenges regarding census blocks that Commission data demonstrate are already served. ACA Connects June 2019 Ex Parte at 2, n. 3.

⁷³ For RDOF Phase II, ACA Connects supports the Commission’s plan to require fixed service providers to provide broadband coverage polygons that will be used to identify partially served census blocks eligible for funding. See *DODC Order/FNPRM* at para. 12.

The Commission also should hold off on lowering the current high-cost threshold to make addition locations eligible for funding until at least RDOF Phase II.⁷⁴ Commission data show that there are 6.3 million locations with costs below the current high-cost benchmark that still lack high-speed broadband service, including 3.4 million locations that lack even 10/1 Mbps service.⁷⁵ Under the CAM, the Commission presumed that price cap carriers in these “lower-cost” areas would receive sufficient customer revenues to offset deployment costs without high-cost support.⁷⁶ The Commission should not include these lower-cost blocks in the RDOF until it gives sufficient time for the various measures adopted over the past few years by the Commission⁷⁷ and Congress⁷⁸ to lower broadband deployment costs and incentivize carriers to build in these areas to take hold. If the Commission determines that these measures have not sufficiently addressed deployment costs in these lower-cost areas, it should obtain additional

⁷⁴ *NPRM* at para. 51.

⁷⁵ *Id.* The Commission asks whether it should prioritize RDOF support to areas that entirely lack 10/1 Mbps fixed broadband service and/or 4G LTE mobile wireless broadband service. *Id.* at para. 60. Beyond setting a reserve price for such areas that is higher than one based on the CAM, the Commission provides few details on how such a prioritization mechanism would work in practice. *Id.* ACA Connects is concerned that such prioritization would undermine the benefits of the RDOF auction, as the additional support going to a few prioritized areas would leave less support to fund deployment in more areas overall. Regardless of design, the prioritization mechanism also would add complexity to the RDOF auction, discouraging participation by smaller service providers and decreasing the program’s overall cost-effectiveness.

⁷⁶ *Id.* at para. 51.

⁷⁷ See, e.g., *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Inv., et al.*, WC Docket No. 17-84, *et al.*, Third Report and Order and Declaratory Ruling, 33 FCC Rcd 7705 (2018) (including reforms to facilitate attachments to utility poles); *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Inv., et al.*, WC Docket No. 17-79, *et al.*, Declaratory Ruling and Third Report and Order, 33 FCC Rcd 9088 (2018) (interpreting Section 253 of the Communications Act, as amended, to facilitate access to public rights-of-way).

⁷⁸ See, e.g., Tax Cuts and Jobs Act of 2017, Pub. L. 115-97, 131 Stat. 2054 (2017) (providing for accelerated depreciation for new capital investments); Consolidated Appropriations Act of 2018, Pub. L. 115-141, 132 Stat. 399, Division A, § 779 (2018) (providing \$600 million for a new broadband loan and grant pilot program).

information from the price cap carriers in these areas to determine why buildouts have not occurred to date before it alters its longstanding high-cost threshold. The Commission should not reward carrier inaction or provide funding to places where the business case for deployment already exists. If the data received by the Commission indicate that the high-cost threshold should be lowered, it can take action to make additional areas eligible for funding in RDOF Phase II or later high-cost auctions. This approach would allow the Commission to continue prioritizing funding to census blocks wholly lacking high-speed broadband service through RDOF Phase I before potentially distributing support to lower-cost locations in partially served areas in RDOF Phase II.⁷⁹

Regardless of the approach it ultimately takes for determining eligible areas, the Commission should ensure that adequate safeguards remain in place to prevent overbuilding existing providers. When establishing the CAF, the Commission stressed that government funds should only be used to support service in eligible areas and not to compete with unsubsidized providers already offering high-performance broadband services to consumers.⁸⁰ And as the Chairman recently explained, the Commission seeks to target high-cost support “to leverage – not displace – private capital expenditures.”⁸¹ This principle both protects competitive service providers and encourages them to upgrade and expand existing networks. It also makes efficient use of scarce government resources by targeting them only to areas where service otherwise would not be provided.⁸² In the *NPRM*, the Commission proposes

⁷⁹ If the Commission chooses to lower the high-cost threshold for RDOF Phase II, it also should set the reserve price for the newly eligible areas based on a lower benchmark (e.g., \$40 or \$45) to reflect the relatively lower deployment costs in these areas. See *NPRM* at para. 57.

⁸⁰ *Connect Am. Fund, et al.*, WC Docket No. 10-90, *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, para. 607 (2011) (“*2011 USF Transformation Order*”).

⁸¹ See Pai Testimony at 1.

⁸² The Commission has strictly enforced this principle by, for instance, denying price cap carrier requests to use CAF Phase I support for second-mile fiber buildouts and upgrades for

requiring RDOF support recipients to certify under Section 54.314 that they used the support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.⁸³ ACA Connects backs this proposal and urges the Commission to take the additional step of requiring all RDOF support recipients to certify in their long-form applications that they will not use the facilities constructed to provide any service in ineligible areas. Imposing this additional safeguard would help ensure that scarce RDOF support only is used to construct networks that provide service in eligible areas and not to undermine competition.

V. THE COMMISSION SHOULD USE THE CAM TO ESTABLISH RESERVE PRICES FOR THE AREAS ELIGIBLE FOR RDOF PHASE I SUPPORT

The Commission should adopt its proposal to use the CAM to establish the reserve prices for the areas eligible for RDOF Phase I support.⁸⁴ Even with its flaws, the CAM remains the most objective measure of per location service cost available today. As discussed above, longer-term efforts to improve the accuracy of broadband deployment data, while beneficial, may take years to implement and should not prevent the Commission from moving forward with the RDOF Phase I auction next year.⁸⁵ The CAM relies on a combination of commercial and census data to provide a reasonable estimate of expected service costs.⁸⁶ For CAF Phase II, the Commission used the CAM not only to determine the deployment obligations for model-

“underserved” locations, even though such locations share network facilities with “unserved” locations. *Connect Am. Fund, et al.*, WC Docket No. 10-90, *et al.*, Second Order on Reconsideration, 27 FCC Rcd 4648, paras. 21-22 (2012); see *2016 CAF Phase II Order* at para. 70 (“[W]e conclude on balance that to allow such entities to overbuild census blocks already served . . . would be an inefficient use of our finite budget.”).

⁸³ *NPRM* at para. 33. See 47 C.F.R. § 54.314.

⁸⁴ *NPRM* at para. 54. The reserve prices for the areas eligible for RDOF Phase II support should be determined based on the more granular broadband deployment data obtained through the Commission’s ongoing Digital Opportunity Data Collection proceeding. See *DODC Order/FNPRM* at para. 2.

⁸⁵ See *supra* Section IV.

⁸⁶ See *Connect Am. Fund, High-Cost Universal Serv. Support*, WC Docket Nos. 10-90, 05-337, 28 FCC Rcd 5301, para. 52 (WCB 2013).

based support recipients but also to define the number of eligible locations and reserve prices for the auction.⁸⁷ The Commission also recently updated the CAM to increase the overall reserve price limit and make other adjustments as part of its alternative funding offering to rate-of-return carriers and plans to similarly update the CAM when applied to RDOF Phase I.⁸⁸ The Commission's experience with implementing and improving the CAM, along with the recommendations offered by ACA Connects in these comments, provides a strong framework for establishing reserve prices for the areas eligible for RDOF Phase I support.

Using the CAM would allow the Commission to set reserve prices that are high enough to promote participation in the RDOF Phase I auction while preserving the Commission's role as steward of the Universal Service Fund. Under the CAM, the aggregate reserve price for the RDOF Phase I eligible areas will far exceed the funding available in the round. Thus, auction participants will have to compete across areas for limited funding, increasing the overall cost-effectiveness of the program. Inter-area competition helped to drive down bids in the CAF Phase II auction and led to higher-performance broadband service being provided at a lower costs in the areas awarded support.⁸⁹ The Commission would achieve a similarly efficient outcome for RDOF Phase I by using the CAM to establish reserve prices.⁹⁰

⁸⁷ See *2018 CAF Phase II Notice* at para. 210.

⁸⁸ See *NPRM* at para. 56; *Connect Am. Fund, et al.*, WC Docket No. 10-90, *et al.*, Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, 33 FCC Rcd 11893 (2018).

⁸⁹ See *2016 CAF Phase II Order* at paras. 80-85; *NPRM* at para. 17.

⁹⁰ Going forward, the Commission should continue to track the effectiveness of the CAM and make corrections and improvements to the model as necessary to ensure it provides reasonable service cost estimates. See, e.g., *Wireline Competition Bureau Issues Corrected Alternative Connect Am. Model II Offers to 37 Companies, Extends the Election Deadline, and Seeks Comment on Location Adjustment Procedures*, WC Docket No. 10-90, Public Notice, DA 19-504 (June 5, 2019) (identifying and correcting errors related to 36 offers of alternative CAM support).

VI. THE COMMISSION SHOULD LOWER THE SHORT-FORM APPLICATION REQUIREMENTS FOR EXISTING SERVICE PROVIDERS

The Commission should require less technical and financial information at the short-form application stage from RDOF applicants that are existing service providers. The Commission proposes to establish a two-step application process for the RDOF similar to that used in CAF Phase II.⁹¹ However, the Commission observes that much of the information requested in the short-form application can be obtained through already-available Form 477 filings of existing service providers.⁹² The Commission therefore asks whether it should lower the RDOF short-form application requirements imposed on existing service providers to streamline the application process and conserve staff resources.⁹³

ACA Connects supports this change. ACA Connects agrees with the Commission that the CAF Phase II application process resulted in “an appropriate but not burdensome screen to ensure participation by qualified applicants.”⁹⁴ But the *NPRM* presents an opportunity to further streamline the application process for those entities with a proven track record of providing quality broadband service to consumers. The information contained in the Form 477 filings “would provide the Commission with sufficient assurance before the auction that an entity has demonstrated that it has the ability to build and maintain a network.”⁹⁵ The Commission therefore should require less technical and financial information from existing service providers in their RDOF short-form applications.⁹⁶ Specifically, the Commission should exempt existing

⁹¹ *NPRM* at para. 65.

⁹² *Id.* at para. 80.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.* at para. 74. The Commission should consider providing alternatives for service providers that are not required to file Form 477 to demonstrate sufficient operational history.

⁹⁶ The Commission also should require less technical and financial information from applicants that qualified to participate in CAF Phase II. See *id.* at para. 80. Like existing service providers,

service providers who plan to bid on performance and latency tiers that match their current service offerings from having to provide the operational history, technology type, spectrum access, and financial information requested on the short-form application.⁹⁷ The Commission should instead require such providers to submit a certification, similar to that proposed in the *NPRM*, stating they are technically and financially capable of meeting their RDOF public interest obligations.⁹⁸ If the Commission has any questions about an existing service provider's technical or financial qualifications to participate in the RDOF, it could request further information on a case-by-case basis.⁹⁹ The remaining short-form application requirements, including the ownership and joint bidding arrangement disclosures as well as the due diligence certification, would remain the same to guarantee all applicants are eligible to participate in the RDOF and understand the obligations that come with receiving support.¹⁰⁰

VII. THE COMMISSION SHOULD PROVIDE LIMITED ADDITIONAL SUPPORT TO TRANSITIONING PRICE CAP CARRIERS

The Commission should provide limited additional support to price cap carriers that accepted CAF Phase II model-based funding to ensure that consumers retain access to supported services while it implements the RDOF. In the *NPRM*, the Commission seeks input on how best to transition price cap carriers from CAF Phase II model-based support in areas where it ultimately awards RDOF support.¹⁰¹ The CAF Phase II model-based support term is

these applicants already demonstrated that they have the ability to build and maintain networks while meeting their public interest obligations.

⁹⁷ See *id.* at paras. 72-74. By contrast, a potential RDOF auction participant that plans to bid on performance and latency tiers above their current offerings would need to provide all of the information required for the short-form application.

⁹⁸ *Id.* at para. 71.

⁹⁹ *Id.* at para. 82.

¹⁰⁰ See *id.* at paras. 70, 78.

¹⁰¹ *Id.* at para. 94. The Commission also seeks input on how best to transition incumbent price cap carriers from legacy high-cost support in areas where it awards RDOF support. *Id.* ACA Connects approves the adoption of the four-part transition mechanism proposed in the *NPRM*,

scheduled to end in 2020. Price cap carriers that accepted CAF Phase II model-based funding which are winning bidders at the RDOF auction will be transitioned from CAF Phase II support to RDOF support at the end of 2020.¹⁰² Meanwhile, price cap carriers that accepted CAF Phase II model-based funding which do not participate or are not winning bidders at the RDOF auction have the option of electing an additional year of support, thereby receiving funding through 2021.¹⁰³ The carrier must continue to meet its public interest obligations to receive this additional funding.

While ACA Connects urges the Commission to move forward with the RDOF Phase I auction next year, it is unlikely that the Commission will be able to complete the RDOF Phase II auction before the CAF Phase II model-based support term ends in 2020. Accordingly, the Commission may not know which price cap carriers will be eligible for the additional year of CAF Phase II transitional funding until after such funding runs out. The Commission therefore should allow all price cap carriers that accepted model-based support to elect an additional year of CAF Phase II funding in 2021 in exchange for meeting their existing public interest obligations.¹⁰⁴ This approach will allow consumers to continue to receive supported services while competitive bidding for RDOF funding occurs. However, the Commission should not provide any more CAF Phase II model-based support beyond the optional additional year.¹⁰⁵ The price cap carriers

which largely mirrors the transition process recently adopted for CAF Phase II. See *id.* at paras. 96-98; see also *Connect Am. Fund, et al.*, WC Docket No. 10-90, Report and Order, FCC 19-8, paras. 13-16 (Feb. 15, 2019).

¹⁰² *2014 CAF Phase II Order* at para. 32.

¹⁰³ *Id.*

¹⁰⁴ *NPRM* at para. 101.

¹⁰⁵ In the event that RDOF Phase II is not implemented by the end of 2021, the Commission should consider allowing price cap carriers that accepted CAF Phase II model-based support for relevant areas to receive support if it is likely that consumers will lose access to comparable broadband service in the absence of such funding. See *2011 USF Transformation Order* at para. 163 (stating that the Commission could require model-based support recipients to continue offering “reasonably comparable” broadband services beyond the original funding term).

that accepted model-based support knew such funding was of “limited scope and duration.”¹⁰⁶ None of these carriers had any expectation of receiving additional funding beyond 2021. The transition from the inefficient cost-model program to one based on competitive bidding through the RDOF is critical to ensuring the future integrity of the Commission’s high-cost programs.¹⁰⁷ Thus, the Commission should provide only limited additional funding to price cap carriers that request it and terminate all CAF Phase II model-based support after 2021.

VIII. THE COMMISSION SHOULD ADOPT PRINCIPLES TO FACILITATE STATE BROADBAND PROGRAM ENGAGEMENT

The Commission notes in the *NPRM* that the Universal Service Fund programs represent a federal-state partnership and seeks comment on ways the RDOF can facilitate that partnership.¹⁰⁸ Like the Commission, ACA Connects “applaud[s] state initiatives to advance broadband deployment and access to unserved and underserved areas.”¹⁰⁹ As demonstrated by the CAF Phase II partnership with New York state, the Commission can enable the deployment of faster broadband services at lower costs by leveraging the additional resources offered by state programs.¹¹⁰ Federal-state broadband partnerships also have the potential to reduce the overall burden on Universal Service Fund contributors and, ultimately, consumer ratepayers.¹¹¹ The Commission therefore should adopt principles to facilitate state broadband

“in exchange for ongoing CAF Phase II support”). As with the proposed transition mechanism for legacy high-cost support, price cap carriers that accepted model-based support would not lose funding for serving an area until the Commission authorizes RDOF funding for a different service provider for that area. See *NPRM* at paras. 96-98.

¹⁰⁶ *2011 USF Transformation Order* at para. 178.

¹⁰⁷ See ACA Connects July 2019 Ex Parte at 2.

¹⁰⁸ *NPRM* at para. 13.

¹⁰⁹ *2016 CAF Phase II Order* at para. 218.

¹¹⁰ *New York Waiver Order* at para. 28.

¹¹¹ *Id.* at para. 40.

program engagement while establishing safeguards to ensure support is allocated in a transparent and efficient manner.

For the CAF Phase II reverse auction, ACA Connects explained that coordination with state broadband initiatives could bring higher-performance and less-expensive broadband services more quickly to unserved areas.¹¹² However, ACA Connects warned that sufficient safeguards must be in place for state broadband program engagement to be successful. At a minimum, ACA Connects recommended that state programs meet certain threshold requirements before partnering with the Commission to avoid undermining the aims of CAF Phase II. Specifically, states would need to show that: (1) support under their programs would be limited to unserved areas under the CAF Phase II program; (2) their programs' public interest standards would mirror those adopted for the CAF Phase II program; (3) program support would be awarded through a competitive bidding mechanism that maximizes participation by all providers, including smaller providers that may not have previously participated in broadband deployment programs; and (4) their programs' accountability measures, including reporting and audit requirements, would match those adopted under the CAF Phase II program.¹¹³

ACA Connects also observed that there are costs to the Commission from state broadband program engagement, not only in terms of the time and resources spent developing partnerships but also from the potential risk that the state programs prove ineffective.¹¹⁴ Accordingly, ACA Connects asserted that having a state just meet the threshold CAF Phase II requirements was not a sufficient basis for the Commission to coordinate with a state

¹¹² See Letter from Ross J. Lieberman, Senior Vice President of Government Affairs, American Cable Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90, 1-2 (Jan 13, 2017) ("ACA Connects State Engagement Ex Parte"); see also ACA Connects June 2019 Ex Parte at 6-7.

¹¹³ ACA Connects State Engagement Ex Parte at 1-2. See ACA Connects June 2019 Ex Parte at 6, n. 14.

¹¹⁴ ACA Connects State Engagement Ex Parte at 2.

broadband deployment program.¹¹⁵ Instead, ACA Connects advised that the Commission should require more from a state seeking a federal partnership to make sure the costs of the partnership did not exceed the potential benefits. Thus, in addition to meeting the threshold CAF Phase II requirements, ACA Connects proposed five principles for Commission engagement with state broadband deployment programs:¹¹⁶

- First, the state must demonstrate that its program required a support recipient to provide broadband service with performance characteristics (*e.g.*, speed and latency) that substantially exceeded the Commission's baseline performance requirements.
- Second, the state must require a program support recipient to deploy a network covering all required locations substantially faster than the timing required by the Commission (*i.e.*, 100 percent deployment by the end of the third year of support).
- Third, the state must utilize a competitive bidding process that granted sufficient, but not excessive, funding to providers to meet these enhanced state performance and expedited deployment obligations.
- Fourth, to give the state a meaningful stake in ensuring the success of its program, it must match CAF Phase II funding in two respects. The state must make funding available in an amount equal to, or greater than, the aggregate amount that the CAF Phase II competitive bidding process made available for the state's unserved areas. In addition, the state must at least match the amount of CAF Phase II funding contributed by the Commission.
- Fifth, the state must request and obtain approval from the Commission for its coordination proposal and the Commission would have a notice and comment process

¹¹⁵ *Id.*

¹¹⁶ *Id.* at 2-3.

for reviewing such proposals that included public input. The notice and comment process would allow for a comprehensive assessment of whether the proposed partnership met Commission requirements and advanced the public interest.¹¹⁷

ACA Connects' principles received support from New York state. As state officials told the Commission:

[T]he five principles proposed by ACA in its submission offer a sensible approach for Commission rules. The Commission should adopt these principles as standards in rules for coordination between state broadband initiatives and Phase II of the CAF program. This approach, which the New York program generally satisfies, would lead to broadband networks that are better, faster, and cheaper than those available under the CAF program.¹¹⁸

As the Commission considers permitting federal-state partnerships in the RDOF, it should adopt ACA Connects' five principles for state broadband deployment program engagement. As with the CAF Phase II partnership with New York state, it is critical that states require their support recipients to comply with all Commission public interest, financial, technical, and reporting/accountability requirements.¹¹⁹ The Commission should independently review and determine whether a state broadband program support recipient meets the RDOF eligibility requirements and is capable of satisfying the terms and conditions of receiving federal funding. Further, each state support award should be submitted for final review and approval by the Commission under an expedited process established by the Commission.¹²⁰ By adopting ACA Connects' recommended principles for state broadband program engagement, the Commission will retain ultimate oversight over the distribution of RDOF support and foster innovative

¹¹⁷ ACA Connects also suggested that the Commission consider adopting additional requirements to ensure it achieved its CAF Phase II objectives. *Id.* at 2.

¹¹⁸ Letter from John M. Beahn, Counsel to Empire State Development, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90, *et al.*, 2 (Jan. 17, 2017).

¹¹⁹ See *New York Waiver Order* at para. 26; see also ACA Connects June 2019 Ex Parte at 8.

¹²⁰ See *New York Waiver Order* at para. 57; see also ACA Connects June 2019 Ex Parte at 8.

programs that will bring high-performance broadband services to unserved areas more quickly and efficiently than if the Commission goes it alone.

IX. CONCLUSION

ACA Connects supports the Commission's general framework for the RDOF to spur the deployment of high-speed broadband networks in unserved areas. In these comments, ACA Connects provided recommendations to maximize RDOF auction participation, thereby increasing competition for available funding and the overall cost-effectiveness of the program, and to improve the overall structure and implementation of the RDOF. Combined with the proposals set forth in the *NPRM*, these recommendations will help ensure the success of the RDOF and advance the Commission's goal of closing the digital divide.

Respectfully submitted,

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