



N A R U C
National Association of Regulatory Utility Commissioners

March 29, 2021

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

The Honorable Brendan Carr
Commissioner
Federal Communications Commission
45 L Street NE
Washington, DC 20554

The Honorable Geoffrey Starks
Commissioner
Federal Communications Commission
45 L Street NE
Washington, DC 20554

The Honorable Nathan Simington
Commissioner
Federal Communications Commission
45 L Street NE
Washington, DC 20554

RE: Written ex parte filed in the proceeding captioned: *In the matter(s) of the Rural Digital Opportunity Fund Auction, AU Docket No. 20-34, the Rural Digital Opportunity Fund, WC Docket No. 19-126, and the Connect America Fund, WC Docket No. 10-90*

Dear Acting Chairwoman Rosenworcel and Commissioners Starks, Carr and Simington,

In the [Notice](#) setting out the procedures for Auction 904: the Rural Digital Opportunity Fund, the FCC initially expressed concerns about new technologies abilities' to provide gigabit services and some at the above baseline (100/20 Mbps) speeds.¹ Nonetheless, many of these same providers were permitted to bid and win. In addition to the concerns with some bidder's proposed network designs, many continued to bid well after the FCC's clearing round; and in some areas below ten percent of the areas' reserve prices.

Since the completion of Auction 904, many have weighed in on the crucial need for the FCC to carefully review the long form applications, along with the subsequently filed technical, financial, and managerial information of RDOF winners to ensure each provider does in fact have the technical, financial,

¹ *Rural Digital Opportunity Fund Phase I Auction Scheduled For October 29, 2020, Notice and Filing Requirements and Other Procedures for Auction 904*, AU Docket No. 20-34 et. al., (rel. June 11, 2020), ¶¶ 98-99. (Notice) (“[S]ome technologies lack demonstrated capabilities to perform at certain speed and latency combinations—and we generally do not find it prudent to authorize bidding for performance tier/latency/technology combinations that lack a proven track record . . . The record demonstrates significant concern regarding applicants that propose to use technologies that have not been widely deployed to offer services at high speeds or low latency, or have not been deployed at all. . .The risk of default—and therefore leaving an area unserved longer than necessary—is significantly greater if Commission staff . . .cannot rely on concrete examples of the technology being used.”)

managerial, operational skills, capabilities, and resources to deliver the services at the promised speed and latency.² This includes, among others, a

(1) [January 19, Bipartisan and Bicameral letter from 160 members of Congress](#) asking

“that the FCC redouble its efforts to review the long-form applications that will now be submitted...[and] validate that each provider in fact has the technical, financial, managerial, operational skills, capabilities, and resources to deliver the services that they have pledged [to provide]. We also strongly encourage the FCC to make as public as possible the status of its review and consider opportunities for public input.”

(2) [January 21, 2021 Letter from the Mid-America Regulatory Conference](#) that encourages

“the FCC to rigorously review bidder long form submissions to ensure that successful bidders have the financial means and technical ability to construct and service customers in the timeframe required . . . for all of the locations included in their bid and at the performance tier contained in their bid. To allow any bidder to have their long form approved who has not conclusively proven to the FCC that they can and will perform as required would be robbing the residents of those bid areas of their opportunity to obtain the broadband service they need to participate in the 21st century economy.”

And finally a

(3) [February 2, 2021 Letter from the California Public Utilities Commission](#) which, concurs

“with many commenters that the FCC could take several steps to help the states ensure winning bidders deliver on their promises. First, we urge the FCC to vet the companies’ plans and financial resources thoroughly. We recommend that the FCC allow winning bidders whose capabilities are deemed inadequate to surrender with minimal or no penalty. Finally, we support the concerns raised in your dissent when the FCC originally enacted the RDOF program, and encourage you enact these reforms to the program.”

On February 11, 2021, NARUC adopted a resolution agreeing with these public statements. That resolution specifically urges the FCC to closely scrutinize the long-form applications and subsequently filed technical, financial, and managerial information of provisional RDOF support winners to ensure that each provider does in fact have the technical, financial, managerial, operational skills, capabilities, and resources to deliver the services at the speeds and latency tiers they promised to provide.

² See, e.g., February 1, 2021 NRECA Whitepaper [The Rural Digital Opportunity Fund: Rural America’s Broadband Hopes at Risk](#), which outlines possible technical concerns with some fixed wireless and hybrid fixed wireless Gigabit tier bidders. NRECA, NTCA and the Fiber Broadband Association raised concerns about the fact that one winning bidder, Space-X/Starlink, which proposes to provide service through Low Earth Orbit satellites is still in its beta test phase. See, e.g., the February 8, 2021 [letter](#) from the Fiber Broadband Association and NCTA attaching a [Starlink RDOF Assessment Final Report](#) that strongly suggests that SpaceX will be unable to meet the RDOF public interest requirements. Indeed, it does not appear that SpaceX currently has a functioning voice service – a requirement for any eligible telecommunications carrier/RDOF winning bidder.

NARUC's resolution, which is attached to this letter, like the Congressional letter, encourages the FCC to seek and incorporate opportunities for input into its RDOF long-form review so as to ensure the success of the program and to minimize the possibility of waste, fraud, or abuse of USF funds.

Several parties have filed requests to increase needed scrutiny on specific applications.³ At a minimum the FCC should put these requests out for comment. Ideally there should be some mechanism that permits useful third party scrutiny of the long-form applications. Targeted public input on specific applications can only increase the probability that the RDOF objectives will be met. Critical review is important. Winning bidders that fail to provide the promised services will delay service to those consumers in the designated census blocks for years.

It is important that each winning bidder fulfills all the requirements in the long-form process and that the Commission ensures each winning bidder has the technical, financial, managerial, operational skills, capabilities, and resources to deliver the services that they have pledged for every American they plan to serve. The financial investment of the USF—which is just over \$9B—must be protected. Close scrutiny of the applications is in the public interest as it will protect ratepayers and significantly increase the probability that winning bidders do provide the promised services.

If you have any questions about the issues raised in this letter, please do not hesitate to contact me at jramsay@naruc.org or 202.257.0568.

Sincerely,

James Bradford Ramsay
NARUC General Counsel

cc: *Travis Litman, Chief of Staff, Office of Chairwoman Rosenworcel*
Trent Harkrader, Acting Special Advisor, Office of Chairwoman Rosenworcel
Ramesh Nagarajan, Acting Legal Advisor, Wireline, Office of Chairwoman Rosenworcel
Greg Watson, Policy Advisor, Office of Commissioner Carr
Austin Bonner, Legal Advisor for Wireline and Public Safety, Office of Commissioner Starks
Carolyn Roddy, Chief of Staff, Senior Legal Advisor for Wireline, Office of Commissioner Simington
Kris Monteith, Wireline Competition Bureau Chief
Michael Janson, Director, FCC Rural Broadband Auctions Task Force
Kirk Burgee, Deputy Director, FCC Rural Broadband Auctions Task Force
Jonathan McCormack, Deputy Director, FCC Rural Broadband Auctions Task Force
Audra Hale-Maddox, Chief of Staff, FCC Rural Broadband Auctions Task Force
Ryan Palmer, Division Chief, Telecommunications Access Policy Division, WCB
Alexander Minard, Deputy Division Chief, Telecommunications Access Policy Division, WCB
Suzanne Yelen, Assistant Division Chief, Telecommunications Access Policy Division, WCB

³ See, e.g., the **Minnesota Telecom Alliance** and **Iowa Communications Alliance** March 20, 2021 [Petition to Deny](#) which outlines some serious allegations about one provider's winning bids in two states. See also, the February 25, 2021 **Ensuring RDOF Integrity Coalition** [Informal Request](#) for the FCC to "promote transparency for RDOF by adopting its familiar mechanism of a protective order regime to allow third parties the opportunity to review and comment on RDOF applications."

***Resolution on the Federal Communications Commission's Review of Rural Digital Opportunity Fund
Auction Bidders Long Forms***

Whereas the Federal Communications Commission ("FCC") has completed its Phase I Rural Digital Opportunity Fund ("RDOF") auction;

Whereas the FCC has awarded up to \$9.2 billion to help deploy broadband to areas in all 56 states and US territories;

Whereas the National Association of Regulatory Utility Commissioners ("NARUC") supports the FCC's efforts to deploy broadband services in their territories;

Whereas NARUC has an interest in ensuring the appropriate and responsible expenditure of Universal Service Fund ("USF");

Whereas on January 19, 2021, a bipartisan group of Members of Congress sent a letter to then-Chairman Pai urging "[a]s responsible stewards of USF funds, we ask the FCC to redouble its efforts to review the long-form applications that will now be submitted.";

Whereas the FCC will now commence review of RDOF winning bidders' long-form applications; *and*

Whereas the States, as participants in the Eligible Telecommunications Carrier process, are committed to the FCC's goals of encouraging deployment and responsible stewardship of USF funds; now therefore be it; Resolved that the Board of Directors of the National Association of Regulatory Utility Commissioners, convened at its 2021 Winter Policy Summit, urges the FCC to closely scrutinize the long-form applications and subsequently filed technical, financial, and managerial information of provisional RDOF support winners to ensure that each provider does in fact have the technical, financial, managerial, operational skills, capabilities, and resources to deliver the services at the speeds and latency tiers they have pledged for every American they plan to serve, regardless of the technology they use; *and be it be further*;

Resolved that NARUC encourages the FCC to seek and incorporate opportunities for input into its RDOF long-form review so as to ensure the success of the program and to minimize the possibility of waste, fraud, or abuse of USF funds.

Sponsored by the Committee on Telecommunications

Adopted by the Board of Directors, Directors, February 11, 2021