

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20555**

In the Matter of)	
)	
<i>Establishing a 5G Fund for Rural America</i>)	GN Docket No. 20-32
)	

**COMMENTS OF THE
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS**

The National Association of Regulatory Utility Commissioners (NARUC) respectfully submits these comments in response to the Federal Communications Commission’s (FCC) April 24, 2020 Notice of Proposed Rulemaking (*NRPM*) in the above-captioned proceeding.¹

For over 125 years, NARUC, a quasi-governmental non-profit corporation in the District of Columbia, has represented the interests of public utility commissioners from agencies in the fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands charged with, *inter alia*, overseeing certain operations of telecommunications utilities.

¹ *In the Matter of Establishing a 5G Fund for Rural America*, GN Docket No. 20-32, Notice of Proposed Rulemaking and Order, FCC 20-52 (Adopted Apr. 23, 2020), available online at: https://ecfsapi.fcc.gov/file/0424297602982/FCC-20-52A1_Rcd.pdf; *Comment Deadline Set for Notice of Proposed Rulemaking on Establishing a 5G Fund for Rural America*, GN Docket No. 20-32 (DA 20-555) (May 26, 2020), at: <https://ecfsapi.fcc.gov/file/052690692764/DA-20-555A1.pdf>, 85 Fed. Reg. 31616 (May 26, 2020), at: <https://www.federalregister.gov/documents/2020/05/26/2020-09620/establishing-a-5g-fund-for-rural-america>

NARUC is recognized by Congress in several statutes² and consistently by the Courts³ as well as a host of federal agencies,⁴ as the proper entity to represent the collective interests of State utility commissions.

At our recent February meetings in Washington, D.C., NARUC passed a [Resolution on the 5G Fund](#), attached as Appendix A. The resolution recognizes the widely acknowledged deficits in current mapping data and specifies that the FCC must:

Require current and accurate mobile wireless data coverage mapping prior to awarding any dollars from the 5G Fund and that 5G Fund dollars be prioritized for areas that do not have mobile wireless data coverage meeting a 5/1 mbps threshold.

DISCUSSION

The *NPRM* creates a \$9 Billion dollar 5G fund to support next Generation Wireless Broadband Connectivity in Rural America. It proposes to use a

² See 47 U.S.C. §410(c) (1971) (Congress designated NARUC to nominate members of Federal-State Joint Board to consider issues of common concern); See also 47 U.S.C. §254 (1996); See also *NARUC, et al. v. ICC*, 41 F.3d 721 (D.C. Cir 1994) (where this Court explains “Carriers, to get the cards, applied to...(NARUC), an interstate umbrella organization that, as envisioned by Congress, played a role in drafting the regulations that the ICC issued to create the "bingo card" system).

³ See, e.g., *U.S. v. Southern Motor Carrier Rate Conference, Inc.*, 467 F. Supp. 471 (N.D. Ga. 1979), *aff'd* 672 F.2d 469 (5th Cir. 1982), *aff'd en banc on reh'g*, 702 F.2d 532 (5th Cir. 1983), *rev'd on other grounds*, 471 U.S. 48 (1985) (where the Supreme Court notes: “The District Court permitted (NARUC) to intervene as a defendant. Throughout this litigation, the NARUC has represented the interests of the Public Service Commissions of those States in which the defendant rate bureaus operate.” 471 U.S. 52, n. 10. See also, *Indianapolis Power and Light Co. v. ICC*, 587 F.2d 1098 (7th Cir. 1982); *Washington Utilities and Transportation Commission v. FCC*, 513 F.2d 1142 (9th Cir. 1976); *Compare, NARUC v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007); *NARUC v. DOE*, 851 F.2d 1424, 1425 (D.C. Cir. 1988); *NARUC v. FCC*, 737 F.2d 1095 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1227 (1985).

⁴ *Compare, NRC Atomic Safety and Licensing Board Memorandum and Order (Granting Intervention to Petitioners and Denying Withdrawal Motion)*, LBP-10-11, *In the Matter of U.S. Department of Energy (High Level Waste Repository)* Docket No. 63-001-HLW; ASLBP No. 09-892-HLW-CABO4, *mimeo* at 31 (June 29, 2010) (“We agree with NARUC that, because state utility commissioners are responsible for protecting ratepayers’ interests and overseeing the operations of regulated electric utilities, these economic harms constitute its members’ injury-in-fact.”)

competitive reverse auction format to award funding for wireless broadband services, patterned after the FCC's recent Connect America Fund Phase II auction and the design for the upcoming Rural Digital Opportunity Fund Phase I auction.

The FCC specifically seeks comment on two different approaches to identifying eligible areas for the Phase I reverse auction: One approach would hold an auction in 2021 by defining eligible areas based on current data sources that identify areas as particularly rural and thus in the greatest need of universal service support. An alternative option would delay the 5G Fund Phase I auction until at least 2023, after collecting and processing improved mobile broadband coverage data through the Commission's new Digital Opportunity Data Collection. Both would prioritize funding to areas that have historically lacked 4G LTE or even 3G service. The proposed 5G Fund budget also includes \$680 million reserved to support 5G networks serving Tribal lands as part of Phase I.

Congress Recognizes and the FCC has documented that its existing wireless Broadband Maps are Deficient

Less than two months ago, on March 23rd, the President signed into law, the *Broadband Deployment Accuracy and Technological Availability Act*, online at: <https://www.congress.gov/bill/116th-congress/senate-bill/1822>.

The bill reflects overwhelming bipartisan agreement that the FCC needs more accurate broadband maps to target subsidy funds.

The bill is designed to fix problems with the FCC's data collection process. The FCC's current process includes collecting information from a form that ISPs submit to the FCC called Form 477. There are a host of problems with Form 477 data that has led to ISPs overstating coverage. The anecdotal evidence of the map's inaccuracy is pervasive. But aside from the anecdotes, the FCC staff, in December,

released a report documenting the deficits in the data collected, noting in particular the fact that most data provided by carriers significantly overstate their coverage.⁵

The FCC must require current and accurate maps prior to awarding funds from the 5G Auction.

In the same December 2019 Staff report, at ¶ 5, mimeo at 2, the FCC staff conceded the obvious: “Inaccurate data jeopardize the ability of the Commission to focus our limited universal service funds on the unserved areas that need the most support.”

NARUC agrees. Funding 5G deployment in rural America is too important not to do right. That means using accurate data. The FCC must require current and accurate mobile wireless data coverage mapping prior to awarding any dollars from the 5G Fund. Any other action would be inconsistent with, if not the letter, certainly the intent of Congress when it passed the Broadband Data Improvement Act just a little over two months ago.⁶

⁵ *Mobility Fund Phase II Coverage Maps Investigation Staff Report*, GN Docket No. 19-367, at ¶ 4, mimeo at page 2 (“Through the investigation, staff discovered that the MF-II coverage maps submitted by Verizon, U.S. Cellular, and T-Mobile likely overstated each provider’s actual coverage and did not reflect on- the- ground performance in many instances. Only 62.3% of staff drive tests achieved at least the minimum download speed predicted by the coverage maps—with U.S. Cellular achieving that speed in only 45.0% of such tests, T-Mobile in 63.2% of tests, and Verizon in 64.3% of tests. Similarly, staff stationary tests showed that each provider achieved sufficient download speeds meeting the minimum cell edge probability in fewer than half of all test locations (20 of 42 locations). In addition, staff was unable to obtain any 4G LTE signal for 38% of drive tests on U.S. Cellular’s network, 21.3% of drive tests on T-Mobile’s network, and 16.2% of drive tests on Verizon’s network, despite each provider reporting coverage in the relevant area.”) (2019 Staff Report) online at: <https://docs.fcc.gov/public/attachments/DOC-361165A1.pdf>.

⁶ As the *NPRM* acknowledges in ¶ 36, the Statute “requires the Commission to use these maps when awarding new funding to deploy broadband service after the maps have been created.”

5G Fund dollars should be prioritized for areas that do not have mobile wireless data coverage meeting a 5/1 mbps threshold.

In ¶ 38, of the NPRM, the FCC proposes to make eligible for 5G Fund support all areas of the Country where mobile 5G Service would be unlikely to be offered in the absence of high-cost support. Specifically, the FCC proposes that any area that updated coverage data shows lacks 4G LTE coverage by an unsubsidized area would be eligible for support. It also states in the next paragraph:

In light of our proposed definition of eligibility for 5G Fund support under this approach, we expect it would not be necessary to further prioritize areas that have historically lacked 3G or 4G LTE service as these areas would be identified in the new carrier-reported mobile coverage data. We seek comment on this conclusion or whether there are other metrics by which we should prioritize certain areas.

NARUC agrees that areas that lack at least 4G-LTE coverage, defined by the FCC in prior orders as having minimum advertised download speeds of at least 5 Mbps,⁷ should be prioritized.

The FCC should expedite Option B and hold the Auction based on the Congressionally-mandated improved data well before 2023.

NARUC applauds the FCC for the steps the agency has taken thus far in response to the COVID-19 pandemic. The agency has repeatedly demonstrated its ability to act and act quickly. The NPRM does not provide an adequate explanation of why the Option B proposal to base the Auction on better data requires a delay until 2023.

⁷ See, *In the Matter of Connect American Fund*, WC Docket No. 10-90, *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 2152 (3), online at: <https://www.fcc.gov/document/mobility-fund-phase-ii-order-and-fnprm>, at ¶ 51, where the FCC specified that nationwide carriers typically report on their Form 477 submissions that the deployment of 4G LTE reported at minimum advertised download speeds of at least 5 Mbps and specified that speed benchmark as the basis for identifying areas eligible for MF-II.

It's unclear why the FCC cannot generate updated maps for an auction prior to 2023, when Congress requires the FCC to update the form it uses to collect broadband deployment data from carriers no later than March of 2021. The FCC must adhere to its Congressional mandates, which means focusing on collecting accurate data in a timely manner. If the FCC does that, it can deploy funds based on accurate data without waiting three years to do so.

CONCLUSION

The FCC should collect current and accurate mobile wireless data coverage data as per Congress's instructions prior to holding the 5G auction. The auction should prioritize areas that do not have mobile wireless data coverage meeting a 5/1 mbps threshold, and should occur before sometime in 2023.

Respectfully submitted,

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Appendix A - Resolution on the 5G Fund

Whereas in 2011 the Federal Communications Commission (“FCC”) in the Universal Service and Intercarrier Compensation Transformation Order outlined possible mechanisms for supporting improved mobile wireless coverage;

Whereas in 2017 the FCC approved the Mobility Fund Phase II Order creating the structure for making \$4.53 billion available over a ten-year period to support improved mobile-wireless coverage;

Whereas the Mobility Fund Phase II Order required mobile wireless providers to produce coverage maps using an FCC prescribed methodology, and to file their coverage maps with the FCC so that the FCC could identify those areas lacking wireless data coverage with a minimum of 5/1 mbps;

Whereas the Mobility Fund Phase II Order provided a mechanism for challenging those coverage maps to identify additional areas lacking mobile wireless data coverage with a minimum of 5/1mbps. Public utility commissions, local governments, private companies, and non-profit organizations expended millions of dollars and thousands of hours of time to compile and file 20.8 million challenges from 37 states. Approximately 36% of those challenges were found by the FCC to be presumptively successful challenges;

Whereas the FCC’s staff made a determination in 2019 based on these challenges and their own testing that the maps provided by mobile wireless carriers were not sufficiently reliable or accurate for carrying out the purposes of the Mobility Fund Phase II. The FCC simultaneously ended the Mobility Fund Phase II program without providing any dollars for improving mobile wireless coverage;

Whereas FCC Chairman Ajit Pai subsequently announced that the Mobility Fund Phase II would be replaced with a 5G Fund to provide \$9 billion in universal service fund assistance in building 5G infrastructure in rural America with \$1 billion of that targeted at improving access for precision agriculture;

Whereas because the FCC has not yet released a Notice of Proposed Rulemaking on the 5G Fund, there has been no indication regarding what areas the 5G Fund would target. There is concern that without current and accurate mapping these dollars may end up exacerbating the digital divide rather than solving the mobile wireless access problems that currently exist in rural America; *now, therefore be it*

Resolved that the Board of Directors of the National Association of Regulatory Utility Commissioners, convened at its 2020 Winter Policy Summit in Washington, DC, advocates for the FCC to require current and accurate mobile wireless data coverage mapping prior to awarding any dollars from the 5G Fund and that 5G Fund dollars be prioritized for areas that do not have mobile wireless data coverage meeting a 5/1 mbps threshold.

Sponsored by the Committee on Telecommunications

Adopted by the NARUC Board of Directors on February 12, 2020