

**Before the
Rural Utilities Service
Washington, D.C. 20250**

In the Matter of)	
)	
Broadband e-Connectivity)	Docket No. RUS-18-Telecom-0004
Pilot Program)	
)	

**COMMENTS of
WTA – ADVOCATES FOR RURAL BROADBAND**

WTA – Advocates for Rural Broadband (WTA) submits these comments to the Rural Utilities Service (RUS) on the subject of its Notice of Inquiry (NOI) and request for comments on its proposed Broadband e-Connectivity Pilot Program (Pilot Program).¹

I. Introduction

WTA is a national trade association representing more than 340 rural telecommunications providers offering broadband, voice, video-related services in communities across rural America. WTA members serve some of the most rugged, remote and sparsely populated areas of the United States. Their primary service areas are comprised of low-density farming and ranching regions, isolated mountain and desert communities, and Native American reservations. The independent rural local exchange carriers (RLECs) represented by WTA have a long-standing relationship going back 75 years with RUS and its predecessor agency, the Rural Electrification Administration (REA). The vast majority of WTA member companies were, at one time, RUS/REA borrowers and many of them continue to borrow from RUS today. WTA’s members have a vested interest in making sure that the proposed Pilot Program is an effective tool for

¹ 83 FR, 35609, Docket No. RUS-18-Telecom-0004, July 17, 2018. (Notice of Inquiry).

² Public Law No: 115-141, signed into law March 23, 2018.

³ FCC (2016), *2016 Measuring Broadband America Fixed Broadband Report (2016 Broadband Report)*,

helping build broadband networks in rural America and that the limited taxpayer resources are used efficiently to meet program objectives.

As RUS considers how to structure the Pilot Program, WTA believes it should be guided by several goals: 1) finding the right applicants and projects to support with limited funds; 2) building networks that will be sustainable in the long-term; and 3) not displacing or duplicating existing networks.

2. RUS Should Prioritize the Most Worthy Projects and Choose Experienced Applicants

Keeping the above goals in mind, the best way that rural economies and the agriculture, health care, education, and transportation sectors of rural America can be strengthened is by finding the most worthy projects to be funded by the Pilot Program. Selecting experienced, reputable broadband providers will reduce the likelihood that selected applicants will fail to deliver on their promises. RUS should ensure that applicants have the technical expertise and the experience needed to not only build a network, but operate and maintain it for years to come. It would be a waste of scarce resources and a potential displacement of private investment to have a grant/loan recipient build or partially build a broadband network that fails after RUS funding is exhausted. RUS should require an applicant to demonstrate past effectiveness as well as provide a network system design, certified by a professional engineer, to demonstrate technological feasibility. An applicant should also be required to submit a business plan demonstrating financial feasibility and long-term viability.

Once technological expertise, network design, and business planning are demonstrated, RUS should prioritize applications based on several different factors. It is important that an

applicant assists in financing a portion of the costs of a proposed network to demonstrate that it is committed to a sustainable project – in other words, investing some of its own private capital proving it has “skin in the game” – and is not just chasing “free” money. In the vast majority of cases, applicants that seek a loan/grant combination from RUS should be viewed more favorably than those seeking only grant money. In rare cases such as an extremely remote, and therefore extremely costly-to-build area, or in regions with persistent poverty, WTA could understand the rationale for approving an applicant seeking grant money unencumbered by a loan. But even in instances where grant money is solely being sought, it would make sense to require an applicant to partially fund the project itself, similarly to how RUS requires recipients of Community Connect Grants to contribute 15% of the cost of the project.

RUS should also prefer applicants who have existing networks in nearby or adjacent territory. Not only would this demonstrate expertise and experience, but it also would presumably be less expensive for a nearby network operator to expand because it would already have a central office, local employees, middle mile connections, and other physical infrastructure in place.

Finally, applicants that have obtained support from the local communities within their proposed service territory should weigh in their favor. Demonstrating support from local anchor institutions, municipal governments, and community and businesses organizations indicates that applicant has engaged in outreach to the potentially effected community and is committed to fulfilling its promises of bringing broadband service to the area.

3. RUS Should Set Advanced Build-Out Requirements

The Consolidated Appropriations Act of 2018² (the Act) requires RUS to direct grant and loan funds under the Pilot Program to areas where at least 90% of the households do not have “sufficient access” to broadband, defined as 10 Mbps downstream and 1 Mbps upstream. While the 10/1 Mbps broadband speed standard is not sufficient for rural areas because the speed is not reasonably comparable to what residents in urban areas receive,³ the availability of broadband at 10/1Mbps is a good indicator of whether an existing provider is offering service in the area and, therefore, Pilot Program funding should be directed elsewhere. That being said, RUS should expect more of an applicant than 10/1 Mbps when it comes to speeds and other broadband metrics.

Using a broad mix of technologies to bring high-speed broadband to rural America is important and most-likely necessary in some high-cost areas, but ideally, in most situations, RUS should require that recipients of Pilot Program funding build fiber-optic networks. Fiber is the most “future-proof” technology and will enable networks to withstand increasing consumer demand. Fiber will enable rural businesses, farms, and residents to engage in high-bandwidth activities such as teleconferencing for business and education, smart agriculture, e-commerce, telemedicine, and entertainment.

At the very least, RUS should require applicants to build networks to 25/3 Mbps standards, which is the standard that regulators at the Federal Communications Commission and lawmakers in Congress currently use. 25/3 Mbps is the standard the FCC uses to define broadband for the purposes of its broadband progress reports, and it is also the highest standard

² Public Law No: 115-141, signed into law March 23, 2018.

³ FCC (2016), *2016 Measuring Broadband America Fixed Broadband Report (2016 Broadband Report)*, available at www.fcc.gov/reports-research/reports/measuring-broadband-america/measuring-fixed-broadband-report-2016.

to which it requires recipients of Universal Service Fund (USF) support to build. In addition, 25/3 Mbps is the standard by which Congress is defining broadband in both the House and Senate versions of legislation to reauthorize the Farm Bill, and this Pilot Program may be seen as the first of future programs.

25/3 Mbps would also enable RUS-funded networks to be equipped to handle the current online applications that exist.⁴ However, this won't be good enough for long; demand for higher bandwidth will continue to grow with new technology and the proliferation of devices.⁵ The FCC's 2016 Measuring Broadband America report found that there was a 22% increase in the median household broadband speed from the previous year, from 32 Mbps to 39 Mbps.⁶

Along with speed standards, RUS should require applicants to build to a latency standard of 100 milliseconds or less, which will enable real-time applications such as Voice Over Internet Protocol (VoIP). 100 milliseconds or less is the latency standard that the FCC requires recipients of USF support to meet.

Another reason to build to a higher standard than a mere 10/1 Mbps is that the Act requires the U.S. Department of Agriculture (USDA) to reevaluate and re-determine, as necessary, this standard on an annual basis.⁷ If, in the future, USDA determines that 10/1 Mbps is too low a standard for future iterations of the Pilot Program, it could result in past Pilot Program-funded networks being considered insufficient.

⁴ According to the FCC, 25 Mbps is enough to handle current applications, assuming a single device per network. See: www.fcc.gov/reports-research/guides/broadband-speed-guide.

⁵ For example, Netflix recommends 25 Mbps to watch 4K television, but that assumes only one device in use at a time. See: www.usatoday.com/story/tech/columnist/2017/12/10/youre-buying-4-k-tv-how-much-internet-bandwidth-do-you-need/933989001/.

⁶ *2016 Broadband Report*, p. 6.

⁷ The Act, Sec. 779.

The NOI asks whether broadband affordability should be taken into account when RUS considers whether rural residents have “sufficient access” to broadband. To be sure, even if a rural resident has access to 10/1 Mbps broadband, if the cost of service is unaffordable for most residents, what good is this access? The FCC’s 2018 Urban Rate Survey is instructive. In a few areas surveyed, 10 Mbps services cost nearly \$100.00 per month and 25 Mbps service costs more than \$150.00 per month. Some of the less expensive offerings also have data caps. It could be argued that this is “insufficient” access. In announcing the results of its 2018 survey, the FCC set the broadband rate benchmark for uncapped 10/1 Mbps service at \$88.13 and uncapped 25/3 Mbps service at \$94.32 per month.⁸ Setting a ceiling at 120% of the FCC benchmark for the cost of uncapped service in order to be deemed “sufficient” access would ensure that rural residents have access to broadband at reasonably comparable rates and services to that accessed by urban residents.⁹

4. RUS Must Protect Existing Investment from Overbuilding

In order to promote efficiency, RUS must guard against directing Pilot Program funding toward areas where broadband networks with sufficient speeds at reasonable rates already exist. The restriction in the Act regarding funding networks where 10/1 Mbps broadband is already being deployed necessitates knowing where 10/1 Mbps service exists. There does not seem to be one reliable source that provides exact data for the entire nation where service is and is not being provided. Some sources, like the FCC’s Form 477 data, are not granular enough – if a carrier

⁸ While this is not an exact average of urban rates, the FCC uses it as a proxy for the purpose of ensuring USF support it not subsidizing abnormally low rates. Carriers receiving USF support may not charge more than this rate. 2018 Urban Rate Survey available at www.fcc.gov/general/urban-rate-survey-orders-and-public-notice.

⁹ If RUS chooses to use affordability as a measurement of “sufficient access” it should provide an exception for providers in extremely remote areas, such as Alaska, where middle-mile prices are so high that RLECs have to charge more than the broadband rate benchmark.

claims it provides service to one household or location in a census block then all households or potential locations in that census block are served. While it can be a helpful guide, this is not a true depiction of who is served and who is not. The National Broadband Map, which originated at the National Telecommunications and Information Administration and authority for which was transferred to the FCC, has not been updated recently enough to be reliable. The FCC possesses a map showing where it provided Connect America Phase II funding to build networks capable of 10/1 Mbps, though that map does not indicate whether the networks are being built.¹⁰ On August 28th of this year, the FCC announced the recipients of the CAF Phase II Auction with an accompanying map; the winners of which will also have to build out to 25/3 Mbps standards. All this to say, there are many sources of data out there, but no one comprehensive set of data.

The best way to ensure existing networks are not overbuilt is to create a robust challenge process using the existing notice procedures, by which the Act requires RUS abide. Current law provides some flexibility to RUS to determine what information both an applicant and entity wishing to challenge an application shall provide. In determining what information to require, RUS may wish to consult a form that WTA prepared for the FCC when it was considering how to implement its own challenge process to determine whether a USF recipient should lose support based on the presence of an unsubsidized competitor. While WTA's proposed form might not be completely applicable to the Pilot Program needs, it could be helpful.¹¹

Current law also provides RUS flexibility regarding how long to give existing providers to respond to an applicant's proposal, requiring *at least* 15 days. WTA recommends allowing providers who wish to challenge an application at least 45 days. It is likely that employees of incumbent providers are not regularly checking the existing RUS mapping tool to see if an

¹⁰ CAF Phase II map available at <https://www.fcc.gov/reports-research/maps/caf-2-accepted-map/>.

¹¹ Notice of *ex parte* of WTA – Advocates for Rural Broadband, WC Docket No. 10-90, filed on October 24, 2018, www.fcc.gov/ecfs/filing/1024193299572.

application to receive funding to build a network in their territory has been submitted. It is plausible that a week or more could go by before an incumbent is even aware an application has been submitted. Once an incumbent is aware it still has to prepare a response. Fifteen days is just not enough time. WTA also recommends that RUS make every effort to reach out to incumbent providers it suspects may already be providing service in a proposed service territory. Keeping in mind that no map is perfectly accurate, the FCC has a number of maps it has used for the Connect America Fund (CAF) and Alternative Connect America Fund (ACAM) processes that portray where the existing service territories of wireline providers lie.

RUS has a long-standing policy of **not** providing loans or grants to areas where an existing RUS borrower or grantee is providing service. While the Act implies that this policy should apply to the Pilot Program, it is not clear, merely referring to “broadband loans.” RUS should make it clear that applications that propose to serve an area where any RUS borrower or grantee is serving will not be approved.

Lastly, WTA recommends RUS coordinate with the FCC to determine where USF support is being directed. USF is funding the building of networks in rural areas served by large, mid-size, and small providers at 10/1 Mbps speeds or higher. In rare cases USF is funding networks with speeds lower than 10/1 Mbps. Pilot Program funding should be directed to those areas around the country where USF is not being used to build networks. However, due to the mechanism the FCC designed to distribute USF support, some USF recipients, despite being asked to build to certain speeds, are not receiving sufficient USF to do so; the USF support does not cover the real costs of providing service. RUS should allow these underfunded providers to apply for Pilot Program funding to bring their own networks up to 25/3 Mbps speeds. But in general, if USF support is being directed to an area, it is a good indicator that that area will have

a network capable of at least 10/1 Mbps and another provider should not receive Pilot Program funding to overbuild that network.

5. Conclusion

Balancing the goals of efficiently distributing appropriated dollars with making sure the money is targeted at truly needy rural areas as opposed to areas where sufficient service already exists is a challenge. However, RUS has a long history of building networks in rural areas and working with providers dedicated to rural residents, businesses, farms and anchor institutions. Prioritizing applicants with experience and expertise while focusing on areas without 10/1 Mbps service and ensuring existing providers have ample opportunity to weigh in on proposed service territory will make for a successful Pilot Program.

Respectfully submitted,

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