



July 28, 2023

**Filed via ECFS**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
45 L Street NE  
Washington, DC 20554

**RE: Rural Digital Opportunity Fund (Auction 904), AU Docket No. 20-34;  
Rural Digital Opportunity Fund, WC Docket No. 19-126; and  
Connect America Fund, WC Docket No. 10-90**

Dear Ms. Dortch:

WTA – Advocates for Rural Broadband (“WTA”) hereby files this letter in opposition to the letters dated June 20, 2023, and July 14, 2023, from the Coalition of RDOF Winners (“Coalition”) which seek substantial post-auction supplemental additions to the support amounts, as well as significant changes to the distribution schedules and other terms and conditions, for which the Coalition’s members made winning low bids and agreed to accept during the Commission’s Rural Digital Opportunity Fund (“RDOF”) reverse auction.

WTA has not been a proponent of reverse auctions. However, if the Commission employs reverse auctions as a device to determine and distribute Universal Service Fund (“USF”) support in certain areas, it must strictly enforce all of its auction rules, terms and conditions in order to prevent such reverse auctions from being abused, distorted and undermined by various gaming tactics. An obvious gaming danger is the use of a “strategy” of making support bids as unreasonably low as necessary in order to “win” specific service areas, and then coming back to the Commission later for the additional support that is actually needed to construct and operate the promised broadband networks in such areas.

The Coalition requests supplemental funding, accelerated support payments and other additional financial benefits that are above and beyond what its members bid for and agreed to accept in Auction 904. It claims that such additional funding is necessary due to alleged “massive and unprecedented increases in broadband deployment costs” that RDOF bidders “could never have anticipated at the time” they placed their reverse auction bids. That is simply not the case. WTA members and others bidding in Auction 904 during October and November 2020 were well aware of the likelihood of significant future general price level inflation as well as the likelihood of substantial increases in broadband equipment and construction costs due to burgeoning demand for high-speed broadband during the ongoing COVID-19 quarantines and due to foreseeable equipment and labor supply chain disruptions and shortages. WTA members and other responsible bidders factored these likely future cost increases into their Auction 904 bid strategies,

and stopped bidding when the bid prices became so unreasonably low that projects were no longer financially feasible or sustainable.

In its Public Notice (*Rural Digital Opportunity Fund Phase I Auction Scheduled for October 29, 2020; Notice and Filing Requirements and Other Procedures for Auction 904*), FCC 20-77, released June 11, 2020, the Commission made it clear that “Each applicant has the sole responsibility for investigating and evaluating all technical and marketplace factors that may have a bearing on the level of [RDOF] support for which it will seek to bid in Auction 904.” *Public Notice* at para. 128. The Commission continued its due diligence warning by indicating that “Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on or otherwise receive [RDOF] support” and are “responsible for undertaking research to ensure that any support won in this auction will be suitable for its business plans and needs.” *Public Notice*, para. 131. The Commission implemented these due diligence responsibilities by requiring all Auction 904 applicants to make the following certification under penalty of perjury, *Public Notice*, para. 133:

The applicant acknowledges that it has sole responsibility for investigating and evaluating all technical and marketplace factors that may have a bearing on the level of [RDOF] support it submits as a bid, and that if the applicant wins support, it will be able to build and operate facilities in accordance with the [RDOF] obligations and the Commission’s rules generally.

This certification and associated due diligence requirements need to be strictly enforced in order to preserve the integrity of Auction 904 and any future USF reverse auctions. If, for example, a Coalition member made a winning RDOF bid at 20 percent of an area’s reserve price and now receives additional supplemental support that effectively gives it total RDOF support at a level of 35 percent of the reserve price, what are the rights and consequences for a competing bidder who bid and was willing to accept support in the amount of 30 percent of the reserve price but dropped out at that point rather than reduce its bid further to 20 percent of the reserve price? Does the competing bidder now have the right to RDOF support for the area because its 30 percent of reserve price bid is now lower than the Coalition member’s supplemented 35 percent bid? If not, does the competitor now have a right to appeal the “revised” auction result or to require a resumption of Auction 904? Such appeals or resumptions could be substantial if a large number of competitors had placed bids in service areas where such bids were lower than the subsequently supplemented and increased “winning” bids sought by the Coalition.

Beyond the specific issues regarding Auction 904, the post-auction supplementing or revising of the terms and conditions of winning bids would set a very problematic precedent for future reverse auctions. Less responsible bidders would be tempted to game the auction process by placing unreasonably low support bids in order to “win” auctions, and then coming back to the Commission later to request the additional support actually needed to construct and operate the networks. And even if the Commission issued strong warnings that it would not consider or grant requests for post-auction support increases, an RDOF precedent would create a significant complication and hurdle for the Commission during any associated judicial appeals.

The Coalition proposals would also give rise to significant issues with respect to the RDOF default penalties that have previously been assessed. RDOF winners that have paid default penalties, as well as RDOF winners that have been assessed but not yet paid default penalties, may argue that they would not have defaulted if they had received supplemental support or relaxed terms and conditions like those proposed by the Coalition. Others subject to default penalties may argue that they should have received a similar “short amnesty window” like that proposed by the Coalition, or that they should retroactively be allowed to participate in such “short amnesty window” in order to have their default penalties reduced, waived or refunded.

In sum, the Commission should deny the Coalition's proposals, reiterate the certified due diligence responsibilities of all RDOF applicants, and declare that the integrity of the RDOF auction and any future USF reverse auctions requires that support amounts, public interest obligations and other terms and conditions will not be waived or changed from those that constituted material elements of winning bids.

This letter is being filed for inclusion in the public record of the referenced proceedings.

Respectfully submitted,  
**WTA – ADVOCATES FOR RURAL BROADBAND**  
/s/ Derrick B. Owens  
Senior Vice President of Government and Industry Affairs  
/s/ Gerard J. Duffy  
Regulatory Counsel  
400 Seventh Street NW, Suite 406  
Washington, DC 20004  
Phone: (202) 548-0202

cc (all via email): Philip J. Macres  
Ramesh Nagarajan  
Lauren Garry  
Justin Faulb  
Marco Peraza  
Trent Harkrader  
Suzanne Yelen  
Jodie Griffin  
Giulia McHenry