



May 3, 2024

VIA ECFS

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

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

Dear Ms. Dortch:

On Thursday, May 2, 2024, Derrick Owens and Gerry Duffy of WTA – Advocates for Rural Broadband (“WTA”) met with Rashann Duvall, Legal Advisor, Affordable Connectivity Program and Wireline, to Chairwoman Jessica Rosenworcel, via TEAMS conference call to discuss alternatives not involving waivers or amnesties that can incentivize Rural Digital Opportunity Fund (“RDOF”) awardees who cannot or will not build their networks to relinquish those awards at an early date in order to free up the affected areas for potential Broadband Equity, Access and Deployment (“BEAD”) or other broadband funding.

WTA is not a supporter of reverse auctions, but believes that if the Commission employs them to determine and distribute Universal Service Fund (“USF”) support in certain areas, it must strictly enforce its auction rules, terms and conditions. Specifically, the Commission should deny retroactive waivers and amnesties in order to protect the integrity of such reverse auctions and prevent them from being subverted by practices such as reckless and irresponsible bidding and/or deliberate gaming tactics. Once a waiver of reverse auction rules is granted, it will not only encourage future reverse auction participants to expect relief from unsuccessful bidding tactics but also will open the door to increased judicial scrutiny of future Commission determinations regarding similar waiver requests.

In a previous filing in these proceedings, WTA suggested that the downward and upward adjustment criteria of Section 1.80(b)(11) of the Rules could be employed as an alternative to waivers or amnesties to create a financial incentive for early relinquishment of RDOF grants that will not be constructed. However, these adjustment factors appear to apply much more to the \$3,000 per service area and 15 percent capped penalties for pre-grant defaults.

The Commission did establish post-grant RDOF default penalties, but does not appear to have anticipated that some RDOF awardees would decide shortly after grant that they would not proceed with construction and deployment. Whereas Section 54.806(c)(2) of the Rules subjects RDOF awardees to support recovery and default penalties if they have deployed to fewer than 20 percent of their required locations by the end of the third year after grant, it does not specify the support recovery factor or default penalty. Sections 54.806(c)(1) and 54.320(d)(2) of the Rules specify 6-year, 8-year and final milestone support recoveries of from 1.75 to 1.89 times

Marlene H. Dortch, Secretary

May 3, 2024

Page 2 of 2

the support received for the poorest performance tier, plus a default penalty of 10 percent of the carrier's total relevant RDOF support over the 10-year support term for the subject area.

Whereas those RDOF awardees that received grants during 2021 are getting close to their third-year milestone, others with later grant dates will not get there until 2025 or 2026. The Commission could accelerate the relinquishment process without waiver or amnesty by interpreting the "10 percent of relevant RDOF support" default penalty to take into consideration a voluntary early relinquishment. For example, the Commission could announce that RDOF awardees that voluntarily relinquish their RDOF awards by a specified date certain will be subject to recovery of 1.75 times the amount of RDOF support they have received, plus a default penalty of 10% of their relevant RDOF support for the 1, 2 or 3-year period from their date of grant to the relinquishment date. In contrast, RDOF awardees that do not relinquish their grants by the specified date and did not meet future build-out milestones would be subject to recovery of the full 1.89 times the amount of RDOF support that they actually received, plus a default penalty of 10 percent of their total relevant RDOF support over the entire 10-year term. In particular, the 7-to-9-year difference in the base amount of the 10 percent default penalty should provide a sufficient financial incentive for early relinquishment where the RDOF grantee has decided not to build, and should do so without opening up the Pandora's Box of waivers and amnesties.

Finally, WTA notes that the Commission can and should condition an RDOF awardee's acceptance of the reduced default penalty due to the shortened base period of the "10 percent of relevant RDOF support" factor, or any alternative default penalty relief or reduction, upon the RDOF awardee's enforceable commitment not to seek BEAD grants for any of its relinquished RDOF service areas. This will prevent gaming tactics by certain RDOF awardees that could be tempted to default from their RDOF service obligations if they can take advantage of a reduced default penalty in order to seek what they deem to be more lucrative BEAD funding.

Pursuant to Section 1.1206(b) of the Commission's Rules, this submission is being filed for inclusion in the public record of the referenced proceeding.

Respectfully submitted,

WTA – ADVOCATES FOR RURAL BROADBAND

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