BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Rural Digital Opportunity Fund	)	WC Docket No. 19-126
	)	
Connect America Fund	)	WC Docket No. 10-90

REPLY COMMENTS OF ACA CONNECTS – AMERICA'S COMMUNICATIONS ASSOCIATION ON THE NOTICE OF PROPOSED RULEMAKING

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I. INTRODUCTION AND SUMMARY

ACA Connects – America's Communications Association ("ACA Connects") hereby submits reply comments in response to the Notice of Proposed Rulemaking ("*NPRM*") regarding the establishment of the Rural Digital Opportunity Fund ("RDOF").[1] By committing $20.4 billion over ten years through an auction to support the deployment of high-performance broadband networks in unserved areas, the Commission can take major strides towards closing the "digital divide" between rural and urban areas in the RDOF. At the same time, the Commission can ensure that the networks deployed with RDOF support stand the test of time by promoting services offering "higher speeds, higher usage allowances, and low latency."[2] Accordingly, ACA

[1] *Rural Digital Opportunity Fund, Connect Am. Fund*, WC Docket Nos. 19-126, 10-90, Notice of Proposed Rulemaking, 34 FCC Rcd 6778 (2019) ("*NPRM*"). ACA Connects filed initial comments in response to the *NPRM*. *See* Comments of ACA Connects – America's Communications Association on the Notice of Proposed Rulemaking, WC Docket Nos. 19-126, 10-90 (Sep. 20, 2019) ("ACA Connects Comments").

[2] *NPRM* at para. 25.

Connects offered recommendations in its initial comments to maximize RDOF participation and improve the overall structure and implementation of the program.

In these reply comments, ACA Connects builds on these recommendations as informed by the comments offered by other stakeholders in this proceeding. First, the record demonstrates broad support for increasing the RDOF performance tier bid weight spread to make it more technology-neutral, which will maximize auction participation across all performance tiers. Second, ACA Connects agrees with other commenters that the Commission should establish the census block as the minimum geographic bidding unit at the RDOF auction to allow providers of all sizes to target their bids more efficiently. Third, the data provided in the record clearly demonstrate that the proposed RDOF Baseline performance tier will become outdated over the 10-year life of the program. As a result, the Commission should increase RDOF service provider performance requirements over time to ensure supported services remain "reasonably comparable" to those offered in urban areas. Fourth, ACA Connects concurs with stakeholders recommending that the Commission determine the areas eligible for RDOF Phase I funding based on existing Form 477 data and hold off on lowering the current high-cost threshold. Fifth, ACA Connects reiterates its support for streamlining the RDOF short-form application process for existing providers, but agrees with other commenters that this process only should be made available to entities that bid on performance/latency tiers matching their current service offerings. Sixth, the record shows unanimous support for offering incumbent model-based price cap carriers the option to receive an additional year of support in 2021 to avoid potential service disruptions, and ACA Connects recommends the Commission adopt a support phase-down process to move funding to RDOF auction winners as soon as possible. Finally, multiple commenters highlighted the benefits of leveraging the resources offered by state broadband programs, and ACA Connects urges the Commission to adopt principles to facilitate state broadband program engagement in the RDOF.

II. THE COMMISSION SHOULD MAXIMIZE PARTICIPATION IN THE RDOF AUCTION BY ADJUSTING ITS PERFORMANCE TIER BID WEIGHTING METHODOLOGY AND MINIMUM GEOGRAPHIC BIDDING UNIT

The Commission should maximize RDOF auction participation by service providers across all performance tiers and sizes.[3] ACA Connects explained in its initial comments that maximizing participation will ensure that consumers in unserved areas receive high-performance broadband services through a competitive process providing the best return on the Commission's investment.[4] ACA Connects agrees with other stakeholders that the Connect America Fund ("CAF") Phase II auction spurred deployment of broadband networks more quickly and efficiently when compared to the Connect America Cost Model ("CAM").[5] But ACA Connects also concurs with the majority of commenters addressing this issue that the CAF Phase II auction had significant shortcomings that deterred participation, limited competition,

[3] *See id.* at para. 22 (seeking input on the Commission's proposed RDOF auction procedures).

[4] ACA Connects Comments at 3-4. *See* Comments of NTCA – The Rural Broadband Association, WC Docket Nos. 19-126, 10-90, at 30 (Sep. 20, 2019) ("Bidding rules should be structured to enable meaningful participation in the auction by providers of all sizes.") ("NTCA Comments"); Comments of the Fiber Broadband Association, WC Docket Nos. 19-126, 10-90, at 3 (Sep. 20, 2019) (stating that "every bidder . . . must have the opportunity to exert competitive pricing pressure on every other bidder") ("FBA Comments"); Comments of the Wireless Internet Service Providers Association, WC Docket Nos. 19-126, 10-90, at 8 (Sep. 20, 2019) ("Reducing competition in the auction would tend to increase the per-location cost to the budget.") ("WISPA Comments"); Comments of Verizon, WC Docket Nos. 19-126, 10-90, at 7 (Sep. 20, 2019) (urging the Commission to adopt rules that would maximize RDOF auction participation) ("Verizon Comments").

[5] ACA Connects Comments at 2-3. *See* Comments of NCTA – The Internet & Television Association, WC Docket Nos. 19-126, 10-90, at 3 (Sep. 20, 2019) ("Subsequent experience with competitive bidding confirmed that other providers are able to provide faster service with far smaller subsidies.") ("NCTA Comments"); Comments of the California Public Utilities Commission, WC Docket Nos. 19-126, 10-90, at 8 (stating that the CAF Phase II results "confirm[] that the reverse auction process has proven to produce more robust higher speed networks at lower deployment costs nationally than those suggested by the CAF cost model") ("CPUC Comments"); Comments of USTelecom – The Broadband Association, WC Docket Nos. 19-126, 10-90, at 10 (Sep. 20, 2019) (noting the CAF Phase II auction demonstrated that the Commission could effectively auction off high-cost support) ("USTelecom Comments").

and reduced the overall cost-effectiveness of the program.[6] First, the Commission's performance tier bid weighting methodology unduly favored certain providers bidding at lower-performance tiers while discouraging bidding at higher-performance tiers. Second, the Commission's use of census block groups as the minimum geographic bidding unit deterred RDOF auction participation by, among others, smaller cable operators and rural telephone providers. As a result, ACA Connects joins other stakeholders in recommending that the Commission maximize RDOF auction participation by adjusting its proposed performance tier bid weighting methodology to make it more technology-neutral and establishing the census block as the minimum geographic bidding unit.

A. The Commission Should Adjust its Proposed Performance Tier Bid Weighting Methodology to Make it More Technology-Neutral

The Commission should adjust the proposed RDOF performance tier bid weighting methodology to make it more technology-neutral to maximize participation by providers across all performance tiers.[7] As ACA Connects noted in its initial comments, the Commission provided no analysis in the *NPRM* showing that its proposed 90-point performance tier bid weight spread would make RDOF bidding more technology-neutral than alternative weighting methodologies or that this spread would maximize auction participation by service providers across all performance tiers.[8] Unlike most stakeholders, ACA Connects closely examined the

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[6] *See* Comments of United States Cellular Corporation, WC Docket Nos. 19-126, 10-90, at 6 (Sep. 20, 2019) (arguing that the CAF Phase II auction process prevented many providers from placing competitive bids) ("U.S. Cellular Comments"); FBA Comments at 2-3 (asserting that the CAF Phase II auction process "did not result in the most cost-efficient outcome"); USTelecom Comments at 23 (observing that the CAF Phase II action structure acted "as a disincentive to deploy next generation technologies"); Comments of WTA – Advocates for Rural Broadband, WC Docket Nos. 19-126, 10-90, at 10 (Sep. 20, 2019) (asking the Commission to substantially revise the CAF Phase II auction rules before applying them to the RDOF auction) ("WTA Comments"); WISPA Comments at 9 (same).

[7] *See NPRM* at para. 25 (requesting comment on the Commission's proposed RDOF performance tier bid weighting methodology).

[8] ACA Connects Comments at 6.

Commission's weighting methodology during the CAF Phase II proceeding and its analysis showed that the bid weight spread favored bidding for lower-performing tiers and deterred bidding for higher-performing tiers.[9] In other words, the spread was not technology-neutral. ACA Connects therefore recommended an alternative weighting methodology that significantly increased the bid weight spread by raising the weight assigned to the proposed RDOF Baseline performance tier beyond the relatively minor five percent increase suggested in the *NPRM*.[10] ACA Connects submitted that its alternative weighting methodology would enable bidders across all performance tiers to have a reasonable chance of winning at the RDOF auction, which would encourage participation and enhance the program's overall cost-effectiveness.[11]

As discussed below, the record shows that increasing the RDOF performance tier bid weight spread will maximize participation, spur robust competitive bidding, and result in the most efficient use of Commission support. By contrast, proposals to decrease the spread or otherwise favor certain providers at the RDOF auction will discourage participation, decrease competition, and lower the return on the Commission's investment.

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[9] ACA Connects Comments at 7 (citing Letter from Thomas Cohen, Counsel for the American Cable Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90, at Appendix (Feb. 17, 2017)).

[10] *Id.* at 8-9. The following table compares ACA Connects' recommended approach with the Commission's proposed RDOF weighting methodology:

Performance Tier	**Proposed Weight (Commission)**	**Proposed Weight (ACA Connects)**	**Difference**
Baseline	50	75	+25
Above Baseline	25	35	+10
Gigabit	0	0	0

[11] *Id.* at 7.

The Commission should increase the RDOF performance tier bid weight spread

Like ACA Connects, the majority of commenters addressing the proposed RDOF weighting methodology supported increasing the performance tier bid weight spread to maximize competition and spur the deployment of high-performance broadband networks.[12] On this point, ACA Connects finds the study submitted by the Fiber Broadband Association ("FBA") instructive.[13] The FBA study determined that "the Commission's [CAF Phase II] weighting methodology did not maximize participation in the auction . . . . As a result, bidding in the auction was not as competitive as it could have been."[14] The study showed that many potential bidders offering higher-performance broadband services concluded that the weighting methodology unduly favored bidders offering lower-performance broadband services and did not give them a reasonable chance to win at the auction.[15] By favoring bids involving lower-performing technologies over higher-performing technologies, the weighting methodology was not technology-neutral and permitted "lower performance tiers . . . to prevail at a higher price than they might have bid had competition been maximized."[16] Thus, the Commission's weighting methodology resulted in inefficient support disbursements beyond the amounts required to spur deployment – funding that could have been better spent to support broadband

[12] *See, e.g.*, FBA Comments at 2-13; Comments of ITTA – The Voice of America's Broadband Providers, WC Docket Nos. 19-126, 10-90, at 5 (Sep. 20, 2019) ("ITTA Comments"); USTelecom Comments at 21-22; NTCA Comments at 7; Verizon Comments at 5; Comments of Windstream Services, LLC, WC Docket Nos. 19-126, 10-90, at 10-11 (Sep. 20, 2019) ("Windstream Comments"); Comments of the Utilities Technology Council, WC Docket Nos. 19-126, 10-90, at 10 (Sep. 20, 2019) ("UTC Comments"); Comments of ADTRAN, Inc., WC Docket Nos. 19-126, 10-90, at 10 (Sep. 20, 2019) ("ADTRAN Comments"); Comments of the Institute for Local Self-Reliance, WC Docket Nos. 19-126, 10-90, at 2 (Sep. 20, 2019) ("ILSR Comments"); Buckeye Hills Regional Council Comments, WC Docket Nos. 19-126, 10-90, at 9 (Sep. 20, 2019); Comments of Illinois Department of Innovation & Technology, WC Docket Nos. 19-126, 10-90, at 7 (Sep. 20, 2019) ("DoIT Comments").

[13] *See* FBA Comments at Appendix.

[14] *Id.* at 2.

[15] *Id.* at 5.

[16] *Id.* at 6.

service in other areas.[17] FBA conducted an analysis to determine the appropriate weighting methodology to maximize RDOF auction participation and, like ACA Connects, recommended a significant increase to the weight assigned to the proposed Baseline performance tier.[18] ACA Connects supports FBA's findings and urges the Commission to alter its weighting methodology to make it more technology-neutral based on the analyses it and FBA provided.

ACA Connects also supports increasing the RDOF bid weight spread to ensure the Commission receives the best return on its investment. The FBA study identified specific broadband use cases, such as e-learning and telehealth services, and calculated the relative value provided by each performance tier for each use case.[19] This analysis showed that the Commission's weighting methodology overvalued lower-performing broadband services, providing minimal return on the support provided.[20] Echoing FBA's findings, USTelecom and Windstream both noted that lower-performance broadband services are not well-suited to support e-learning or telehealth applications.[21] Windstream highlighted that e-learning and telehealth applications are particularly important in rural areas located far from hospitals and educational institutions, bolstering the need for high-performance broadband services in these areas.[22] ADTRAN and others also observed that lower-performance broadband services can detrimentally impact the use of real-time applications like online gaming and video conferencing.[23] Consequently, multiple commenters recommended increasing the RDOF

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[17] *Id*.

[18] *Id.* at 12.

[19] *Id.* at 9.

[20] *Id.* at 11.

[21] USTelecom Comments at 22; Windstream Comments at 11.

[22] Windstream Comments at 13.

[23] ADTRAN Comments at 8-9. *See* ILSR Comments at 2 (emphasizing the importance of high-performance broadband services to "5G services, Alexa-type devices, or the continued proliferation of video chatting applications"). In light of the growing importance of real-time applications, the Commission could create additional performance tiers to promote broadband

performance tier bid weight spread to reflect the "narrower set of benefits" provided by lower-performance services.[24] Multiple stakeholders also asserted that increasing the spread properly accounts for the greater utility of higher-performance broadband services over the 10-year life of the RDOF.[25] In particular, INCOMPAS stated that increasing the spread would promote services capable of meeting future consumer needs and produce the "positive externalities" associated with deployment of higher-performance broadband networks.[26] Verizon similarly noted that higher-performance services will be provided over scalable infrastructure that "will support future increases in broadband speeds and also provide the foundation for the deployment of both 4G and 5G mobile wireless services in rural areas."[27] By contrast, lower-performance broadband services would provide none of these ancillary benefits. ACA Connects therefore urges the Commission to adjust the weighting methodology as it proposed to

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services offering symmetrical upload/download speeds in the RDOF. ACA Connects Comments at 9, n. 30. Multiple commenters supported such an approach to foster the deployment of broadband networks providing upload speeds capable of handling e-learning, telehealth, gaming, and other advanced communications services. *See* WTA Comments at 11 (urging the Commission to include a symmetrical performance tier and incentivize providers to bid for it at the RDOF auction); Comments of the National Rural Electric Cooperative Association, WC Docket Nos. 19-126, 10-90, at 6 (Sep. 20, 2019) (same) ("NRECA Comments"); NTCA Comments at 14 (recommending the Commission establish a 15-point "symmetrical bonus" for the RDOF auction); UTC Comments at 10 (requesting the Commission include a "weighting factor" favoring services offering symmetrical speeds at the RDOF auction). Should the Commission adopt this approach, ACA Connects recommends that it establish the following performance tiers and associated bid weights: (1) Gigabit Symmetrical – 0 percent; (2) Gigabit Non-Symmetrical – 10 percent; (3) Above Baseline Symmetrical – 25 percent; (4) Above Baseline Non-Symmetrical – 35 percent; (5) Baseline (Symmetrical and Non-Symmetrical) – 80 percent.

[24] USTelecom Comments at 21. *See* ITTA Comments at 5 (citing the "continued uncertainties" of lower-performance broadband services in support of widening the spread); Comments of Sacred Wind Communications, WC Docket Nos. 19-126, 10-90, at 7 (Sep. 20, 2019) (stating that a wider spread would account for the reduced utility of lower-performing broadband services) ("Sacred Wind Comments").

[25] *See, e.g.*, Comments of INCOMPAS, WC Docket Nos. 19-126, 10-90, at 10-12 (Sep. 20, 2019) ("INCOMPAS Comments"); Verizon Comments at 5; DoIT Comments at 7.

[26] INCOMPAS Comments at 12.

[27] Verizon Comments at 5.

maximize auction participation by providers across all performance tiers and increase the return on its RDOF investment.

The Commission should not decrease the RDOF performance tier bid weight spread

A minority of commenters in the record – mostly representing satellite service providers – asked the Commission to reduce the RDOF performance tier bid weight spread.[28] With the exception of Viasat, none of these commenters provided any study or other analysis supporting this approach. Based on its study, Viasat claimed that the Commission's proposed weighting methodology would significantly restrict the ability of satellite service providers like itself to participate in the RDOF auction.[29] Specifically, Viasat indicated that, if the high latency weight in the proposed RDOF weighting methodology applied during the CAF phase II auction, then it would have been forced to terminate bidding early (*i.e.*, before round 12), leaving some areas unserved.[30] Viasat and others further argued that the high-latency weight was inconsistent with the Commission's technology-neutrality principle because it disfavored bids by satellite service providers.[31] Consequently, Viasat and other satellite stakeholders requested that the Commission reduce the RDOF performance tier bid weight spread by decreasing the weight assigned to high-latency service bids.

The Commission should reject satellite provider calls to reduce the spread. First, at most, the study showed that reducing the spread would encourage Viasat and other similarly-situated satellite service providers to participate in the RDOF auction because they would have

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[28] *See, e.g.*, Comments of Viasat, Inc., WC Docket Nos. 19-126, 10-90, at 2-19 (Sep. 20, 2019) ("Viasat Comments"); Comments of Hughes Network Systems, WC Docket Nos. 19-126, 10-90, at 3-4 (Sep. 20, 2019) ("Hughes Comments"); Comments of SES Americom, Inc. and O3b Limited, WC Docket Nos. 19-126, 10-90, at 7 (Sep. 20, 2019) ("SES/O3b Comments").

[29] Viasat Comments at 6-7.

[30] *Id.* at 7-8.

[31] *Id.* at 17-19, 21. *See* Hughes Comments at 3-4; SES/O3b Comments at 7.

a competitive advantage over bidders at higher performance tiers. But, as indicated by the ACA Connects and FBA studies, reducing the overall spread among different performance tiers would not ensure technology-neutrality and would instead limit overall participation, enabling satellite providers to win at prices that are not cost-effective and depriving unserved consumers of higher-performance services.[32]

Second, the claim that the proposed high-latency weight conflicts with the Commission's technology-neutrality principle misconstrues both the principle's scope and the RDOF's objectives. As the Commission recently explained, its technology-neutrality principle "does not require all competitors to be treated alike, but only prohibits the Commission from treating competitors differently in unfair ways. Standards which are designed to meet reasonable regulatory objectives are not unfair simply because some technologies or service providers cannot meet those standards."[33] The Commission's plan to promote the deployment of "future-proof" broadband networks through the RDOF offering "higher speeds, higher usage allowances, and low latency" is a valid Commission objective and the weighting methodology is a technology-neutral mechanism to further that objective.[34] In contrast to other high-cost programs, such as the recently-adopted mechanisms covering Puerto Rico and the U.S. Virgin Islands, the Commission does not plan to prioritize service costs over network performance

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[32] While Viasat's study suggested that the proposed weighting methodology would have resulted in it exiting the auction early, it failed to show that other service providers (or even other satellite service providers) could not have stepped in and served these areas at a reasonable price point. Indeed, the study conceded that "it is impossible to know how bidding would have proceeded in round 13" and beyond. Viasat Comments at Exhibit. But even if the study's auction estimates were correct, they indicated that the CAF Phase II auction still would have cleared in round 12 if Viasat had not participated, and with only a slight price point increase. *Id.* at 7 (estimating a 1.15 percent increase to the price point if Viasat did not participate in the auction). The study therefore does not show that decreasing the spread would make the RDOF auction substantially more cost-effective.

[33] *Connect Am. Fund, ETC Annual Reports and Certifications*, WC Docket Nos. 10-90, 14-58, Order, para. 29 (2017) (internal quotations omitted) ("*New York Waiver Order*").

[34] *NPRM* at paras. 15, 25.

through the RDOF.[35] Thus, the RDOF weighting methodology "should be technology neutral, but not technology blind."[36]

None of the satellite service provider commenters dispute FBA's conclusion that lower-performance high-latency broadband services detrimentally impact the use of real-time applications critical to e-learning, telehealth, gaming, and video conferencing services. As the FBA study established, these applications provide considerable value to consumers, especially those located in rural areas. While the satellite stakeholders suggest that such applications represent a small portion of consumer broadband use cases today,[37] the networks constructed with RDOF support will be tasked with meeting future, as well as present, consumer needs.[38] As a result, decreasing the spread would not only reduce overall competition in the RDOF auction, it would result in deployment of lower-performing networks unequipped to handle long-term broadband needs and future applications. The Commission therefore should not decrease the performance tier bid weight spread.

The Commission should not establish an absolute preference for certain providers at the auction

Conexon requested that the Commission establish an absolute preference in the RDOF auction clearing round for the provider bidding at the highest performance tier in an area.[39]

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[35] *See The Uniendo a Puerto Rico Fund and the Connect USVI Fund*, *et al.*, WC Docket No. 18-143, *et al.*, Report and Order and Order on Reconsideration, para. 25 (Sep. 30, 2019) (applying a higher weight to a provider's proposed price per location than to its proposed network performance) ("*Puerto Rico/USVI Order*").

[36] NRECA Comments at 7. *See* ADTRAN Comments at 4-5 ("Technical neutrality does not mean that all access technologies should be subsidized regardless of their ability to support the broadband services and applications needed by consumers. Rather, it means that the ability of a given proposed service to meet the required performance should be evaluated without regard to the underlying access technology.").

[37] Viasat Comments at 18; Hughes Comments at 4.

[38] *NPRM* at para. 25.

[39] Comments of Conexon, LLC, WC Docket Nos. 19-126, 10-90, at 6-7 (Sep. 20, 2019) ("Conexon Comments").

Under this proposal, the bidder proposing the highest performance tier for an area at the clearing round automatically would win at the RDOF auction, even if another provider would offer to deploy broadband service at a different performance tier in exchange for an amount of support that is significantly less.[40] No other commenter recommended this approach.

While ACA Connects acknowledges the appeal of bringing the highest performance service to unserved areas, the Commission should not adopt Conexon's proposal, which, like the satellite stakeholders' recommendation, provides an advantage to a single performance tier without considering the impact on the overall auction process. ACA Connects notes that Conexon did not provide any study or other analysis detailing how its proposal would effect RDOF auction participation or the program's overall cost-effectiveness.[41] But even without such analysis, it is clear that Conexon's approach would discourage auction participation by bidders best-positioned to deploy broadband at the lower performance levels. In addition, while the Commission does not plan to prioritize service costs over performance in the RDOF, as discussed above, it still plans to take service costs into account through the weighting methodology to make sure funding is allocated efficiently within the limited program budget.[42] Despite its flaws, the weighting methodology provides a technology-neutral mechanism for the Commission to assess the relative benefits and costs of RDOF bids across all performance tiers simultaneously. By jettisoning the weighting process at the clearing round, Conexon's approach would prioritize funding to higher-performance (and likely higher-cost) broadband services in every instance, regardless of the impact on the RDOF budget. ACA Connects therefore recommends that the Commission reject Conexon's proposal to ensure robust RDOF auction

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[40] *Id.* at 6-7.

[41] *See NPRM* at para. 27 (requiring commenters proposing alternative auction methodologies to "explain how their proposal will balance the objectives of maximizing our limited budget and guarding against widening the digital divide").

[42] *See id.* (stating the weighting methodology is essential to "maximizing our limited budget").

competition across all performance tiers and the most efficient allocation of Commission support within the program's budget.

The Commission should not establish an incumbent provider auction bidding credit

WTA asked the Commission to establish a 25 percent bidding credit at the RDOF auction for incumbent model-based price cap carriers in areas where they met their buildout obligations for CAF Phase II.[43] WTA stated that the bidding credit would "reward" incumbent carriers for satisfying their prior deployment obligations and reduce service disruptions by lowering the likelihood that incumbent providers would be replaced by new entrants following the RDOF auction.[44] No other commenter recommended this approach.

The Commission should reject WTA's proposal for a variety of reasons. First, it is antithetical to the RDOF's goal of awarding "all high-cost support in price cap areas . . . through a competitive bidding process in which all eligible providers will be given an equal opportunity to compete."[45] Second, WTA provided no study or other analysis to support how its proposal would affect the RDOF program or how its credit was calculated.[46] Third, WTA's proposal clearly would deter participation by other providers, undermining the program's overall cost-effectiveness. Fourth, WTA failed to justify why incumbent carriers merit an advantage at the auction. Incumbent carriers deployed upgraded networks in their service territories once before and therefore are well-positioned to offer lower bids at the RDOF auction compared to potential new entrants. Fifth, the Commission recently declined to adopt a similar set-aside for

[43] WTA Comments at 6-8. *See* Letter from Gerard J. Duffy, Regulatory Counsel, WTA – Advocates for Rural Broadband, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90, *et al.*, at 2 (Sep. 26, 2019).

[44] *See* WTA Comments at 6-7.

[45] *NPRM* at para. 9.

[46] *See id.* at para. 27 (requiring commenters proposing alternative auction methodologies to "explain how their proposal will balance the objectives of maximizing our limited budget and guarding against widening the digital divide").

incumbent providers in the *Puerto Rico/USVI Order*, stating that a "fair and open competitive process . . . allowing multiple providers—including those that have not traditionally received high-cost support—to compete for funding will increase the efficiencies of bringing advanced services to consumers."[47] The Commission should reach a similar conclusion here for the RDOF and should not adopt WTA's proposed bidding credit to avoid giving incumbent carriers an undue competitive advantage at the auction.

B. The Commission Should Establish the Census Block as the Minimum Geographic Bidding Unit

The Commission should establish the census block as the minimum geographic bidding unit for the RDOF auction to maximize participation, increase competition, and enhance the program's overall cost-effectiveness.[48] ACA Connects demonstrated in its initial comments that the Commission's decision to use census block groups as the minimum geographic bidding unit in the CAF Phase II auction – a decision apparently driven by the technical limitations of its auction software – discouraged participation by its members and other smaller providers.[49] As ACA Connects explained, census block group bidding requires providers to couple blocks that are economic to serve with those that are uneconomic to serve, in effect forcing an inefficient cross-subsidy.[50] ACA Connects noted that the inclusion of extremely high-cost census blocks in a group only exacerbates this issue and often undermines the business case for census block group bidding by smaller providers.[51] ACA Connects therefore recommended that the Commission establish the census block as the RDOF minimum geographic bidding unit to

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[47] *Puerto Rico/USVI Order* at para. 34.

[48] *See NPRM* at para. 21 (proposing census block groups as the minimum geographic bidding unit, but asking whether there are alternative, "more efficient ways to group census blocks" for the RDOF auction).

[49] ACA Connects Comments at 10-11.

[50] *Id.* at 10.

[51] *Id.* at 12.

maximize participation by providers of all sizes and allow package bidding for those looking to achieve benefits of scale.[52]

ACA Connects was not alone in recognizing the benefits of using the census block as the RDOF auction minimum geographic bidding unit. UTC asserted that adopting the census block as the bidding unit would "promote competition among a wider variety of bidders . . . and provide a more level playing field for smaller entities to bid against larger entities for funding."[53] UTC and others asserted that census block bidding would enable providers to target their RDOF bids more cost-efficiently, resulting in lower deployment costs and increasing the amount of support available to fund deployments in other areas.[54] Like ACA Connects, UTC highlighted the problems presented by the inclusion of extremely high-cost census blocks, warning that these areas can force a smaller provider to walk away from bidding on an otherwise suitable census block group, potentially leaving it unserved.[55] NTCA also recognized that census block bidding would "encourage some smaller operators to participate in the RDOF auction because they can then tailor their bids to desired serving areas."[56] While not advocating for changes to the bidding unit, NTCA acknowledged that adopting outsized bidding units "would almost certainly deter all but the largest operators from bidding" and "box out" smaller providers from participation in the RDOF auction.[57] Both NTCA and UTC also stressed that the Commission

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[52] *Id.* at 11-12.

[53] UTC Comments at 7-8. *See* Comments of Internet Society, *et al.*, WC Docket Nos. 19-126, 10-90, at 3 (Sep. 20, 2019) (arguing that small bidding units would foster the creation of new, local service providers to compete with larger incumbents).

[54] UTC Comments at 7-8. *See* NRECA Comments at 12 (stating that smaller bidding units would allow providers to efficiently "edge out" from their current service territories).

[55] UTC Comments at 8. As discussed in its initial comments, ACA Connects does not oppose the inclusion of extremely high-cost census blocks in the RDOF auction to target support to the hardest-to-serve areas, but only if the Commission allows bidding by individual census blocks. ACA Connects Comments at 12, n. 44.

[56] NTCA Comments at 17.

[57] *Id.* at 18.

should not allow the limitations of its auction software to dictate the bidding unit for the RDOF auction.[58] Instead, the RDOF bidding unit should be structured to maximize auction participation by providers of all sizes.

Despite the clear advantages of census block bidding, some commenters recommended using census block groups or even larger areas as the minimum geographic bidding unit for the RDOF auction.[59] These commenters claimed that allowing bidding by individual census blocks would significantly increase the RDOF auction's complexity and deter smaller providers from participating.[60] But that argument does not hold water, since every bidder is going to evaluate whether to bid – even for a census block group – based on the cost to build a network to serve individual locations and neighborhoods in each census block. In fact, because census block groups may contain service territories with much different costs to serve and much different demographics and location characteristics, it is plain to see that bidding by census block group, rather than by census block, makes participation more complex, especially for smaller providers. With the RDOF auction likely at least a year away,[61] there is no reason why the Commission would not have enough time to upgrade its software to handle bids by individual census blocks. ACA Connects submits that the one-time cost associated with such upgrades would be far

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[58] *See* NTCA Comments at 17 ("NTCA is concerned about the potential for the auction to be structured in a certain way simply because the Commission's current auction software may be designed for certain lots."); UTC Comments at 8 (stating the RDOF auction software "should be technically capable of allowing for entities to bid for specific census blocks").

[59] *See, e.g.*, ITTA Comments at 6-7; WISPA Comments at 9; Comments of California Internet, L.P. dba GeoLinks, WC Docket Nos. 19-126, 10-90, at 9 (Sep. 20, 2019) ("GeoLinks Comments"); Sacred Wind Comments at 2.

[60] *See* ITTA Comments at 7; Sacred Wind Comments at 2; *see also* NTCA Comments at 17 (suggesting that "a national auction with too many units will deter some smaller providers from bidding because they do not have dedicated staffs and/or cannot procure the outside resources to participate meaningfully in a too-complex process.").

[61] The Commission did not include the RDOF auction in its recent list of planned competitive bidding actions for fiscal year 2020. *See Estimate of Sys. of Competitive Bidding for Fiscal Year 2020*, Public Notice, DA 19-977 (OEA Sep. 30, 2019).

outweighed by the long-term benefits achieved through more cost-effective census block bidding. Moreover, any claim that smaller providers cannot manage bidding by individual census blocks is belied by ACA Connects' conversations with its members, who generally advocated for smaller bidding units for the RDOF auction. Thus, far from increasing competition, retaining census block group bidding would discourage participation and lower the RDOF's overall cost-effectiveness.

Some commenters also suggested that larger RDOF bidding units would better account for potential networks synergies and result in more "manageable" service territories.[62] However, these commenters failed to show why package bidding for multiple census blocks at the RDOF auction would not lead to the same result.[63] Package bidding would allow some providers to still achieve benefits of scale while enabling other providers to bid for targeted census blocks more cost-effectively. ACA Connects therefore recommends that the Commission permit package bidding and establish the census block as the minimum geographic bidding unit to maximize RDOF auction participation from providers of all sizes.

III. THE COMMISSION SHOULD INCREASE RDOF SERVICE PROVIDER PERFORMANCE REQUIREMENTS OVER TIME

The Commission should require RDOF support recipients to increase their broadband speeds and monthly usage allowances over time to ensure consumers in eligible areas receive services "reasonably comparable" to those available to their urban counterparts over the 10-year life of the program.[64] As ACA Connects and other stakeholders emphasized, one of the foundational principles of the Universal Service Fund ("USF") is that high-cost support recipients

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[62] GeoLinks Comments at 9; WISPA Comments at 9.

[63] *See* NRECA Comments at 12 ("For persons preferring larger bidding areas, package bidding provides the desired flexibility to meet their wide-area objectives and may offer more flexibility as the auction progresses.").

[64] *See NPRM* at para. 27 (seeking input on how the RDOF performance obligations can "ensur[e] that rural Americans do not fall further behind those living in urban areas").

must provide broadband services that are reasonably comparable to the services offered in urban areas, both in terms of performance and price.[65] Based on recent data, ACA Connects demonstrated that average U.S. consumer demand for broadband services already exceeds the 25/3 Mbps speed/150 GB monthly usage allowance proposed for the RDOF Baseline performance tier.[66] ACA Connects therefore recommended that the Commission increase the performance requirements imposed on RDOF winning bidders in year four and year eight of support to meet the then-comparable speeds/usage allowances offered in urban areas to provide long-term value to consumers in rural and other hard-to-serve areas.[67]

Every commenter addressing this issue concurred with ACA Connects that the proposed Baseline performance tier will become outdated over the course of the 10-year RDOF support term.[68] For example, Conexon stated that Gigabit broadband services already are the norm in many urban areas and the proposed Baseline performance tier will be "wholly insufficient" to address the future needs of rural consumers.[69] Meanwhile, UTC and others indicated that

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[65] ACA Connects Comments at 12-13. *See* Conexon Comments at 7 (discussing importance of ensuring reasonable comparability in supported services); UTC Comments at 10-11 (stating Commission must ensure that supported services are provided "at reasonably comparable quality and cost to the broadband services that are available in urban areas"); USTelecom Comments at 31 (noting Commission duty to ensure reasonably comparable level of broadband service).

[66] ACA Connects Comments at 14-15.

[67] *Id*. ACA Connects further recommended that the Commission consider whether adjustments to the latency requirements need to be made at these times in order to support use of real-time applications critical to e-learning, telehealth, and gaming services. *Id.* at 15, n. 54.

[68] *See, e.g.*, NTCA Comments at 6-8; Windstream Comments at 15; UTC Comments at 10; CPUC Comments at 8; Conexon Comments at 7; WTA Comments at 10; INCOMPAS Comments at 10; WISPA Comments at 21; ADTRAN Comments at 5-6; DoIT Comments at 5-7; Comments of the California Emerging Technology Fund, WC Docket Nos. 19-126, 10-90, at 9 (Sep. 20, 2019) ("CETF Comments"); Initial Comments of the West Virginia Broadband Enhancement Council, WC Docket Nos. 19-126, 10-90, at 4 (Sep. 20, 2019) ("WV Comments"); Comments of Pacific Dataport, Inc., WC Docket Nos. 19-126, 10-90, at 11 (Sep. 20, 2019) ("PDI Comments").

[69] *See* Conexon Comments at 7 (indicating that 10 Gbps broadband speeds are likely to become the urban compatibility benchmark by the end of the RDOF support term).

broadband services providing 100/20 Mbps speeds represent the proper urban comparability benchmark today.[70] NTCA and Windstream concluded that, regardless of the correct comparability benchmark today, the proposed Baseline performance tier soon will be far below the urban average.[71] ADTRAN and others argued that the proposed Baseline performance tier is sufficient to meet most consumer broadband use cases now, but acknowledged that this likely would not be the case in just a few years.[72] Thus, the record is clear that the Baseline performance tier proposed in the *NPRM* will not come close to meeting consumer broadband needs by the end of the RDOF support term.

The record also is clear that broad support exists for the creation of some form of RDOF performance requirement update mechanism. NTCA argued that broadband networks constructed to meet only the proposed RDOF Baseline performance tier will be "built to fail" in the face of rising consumer demands.[73] It further stated that allocating RDOF funding to providers lacking the capability to meet future consumer broadband needs would undermine the overall cost-effectiveness of the RDOF and consign rural consumers to second-class broadband services for the next decade.[74] INCOMPAS and others urged the Commission "to invest in robust fixed networks that are scalable over time and offer comparability in the future."[75] These

[70] UTC Comments at 10. *See* DoIT Comments at 5 (stating that broadband service at 100/20 Mbps speeds is "nearly ubiquitous" in urban areas).

[71] NTCA Comments at 8; Windstream Comments at 15. *See* PDI Comments at 11.

[72] ADTRAN Comments at 5-6; ILSR Comments at 2.

[73] NTCA Comments at 6.

[74] *Id.* at 10.

[75] INCOMPAS Comments at 10. *See* WISPA Comments at 21 ("[T]he applicant must keep in mind that its network must be capable of scaling to meet demand."); Reply Comments of North Carolina Department of Information Technology Broadband Infrastructure Office, WC Docket Nos. 19-126, 10-90, at 3-4 (Sep. 20, 2019) ("We recommend incentivizing scalability.") ("NC Comments"); CPUC Comments at 8 (recommending the Commission invest in "network infrastructure capable of supporting the ever-increasing demands for broadband speed and throughput").

commenters demonstrated that the RDOF should support "future-proof technologies that will be able to meet increasing consumer expectations" to ensure the Commission receives the best return on its investment.[76] Indeed, the Commission recently affirmed that it "must take steps to ensure that the networks we invest scarce universal service support to build will stand the test of time."[77] Establishing a RDOF performance requirement update mechanism would help the Commission achieve this goal.

Although the commenters all agreed that a performance requirement update mechanism is necessary for the RDOF, few provided any concrete proposals for how such a mechanism would work. Most commenters, such as UTC, simply stated that the Commission should monitor urban broadband speeds/usage allowances and consider increasing RDOF performance requirements "after a certain amount of time."[78] By contrast, WTA offered a more prescriptive proposal, recommending the adoption of an "evolving" Baseline performance tier requiring RDOF support recipients to provide broadband service at no less than 25/3 Mbps speeds during the first five years of funding and then increase speeds to at least 50/6 Mbps during the final five years of funding.[79] While ACA Connects appreciates the various suggestions offered in the record, it submits that its proposed RDOF performance requirement update mechanism provides the best balance of ensuring support recipients keep pace with then-existing urban service offerings without being overly prescriptive. As ACA Connects illustrated in its initial comments, its RDOF performance requirement update mechanism is both

[76] UTC Comments at 10. *See* NTCA Comments at 6.

[77] *Puerto Rico/USVI Order* at para. 22.

[78] UTC Comments at 10-11. *See* CETF Comments at 9 (recommending that the Commission "continue to monitor speed and usage requirements of the average consumer to ensure that rural Americans are not consigned to slower speeds than urban consumers"); *see also* WV Comments at 4 (stating that the Commission should establish a "scoring system" to incentivize network upgrades over time).

[79] WTA Comments at 10.

consistent with Commission precedent and reasonable to implement.[80] ACA Connects agrees with GeoLinks that the initial RDOF Baseline performance tier should represent "an attainable minimum" for providers across all technologies.[81] Thus, ACA Connects recommends that the Commission start with the proposed RDOF Baseline performance tier of 25/3 Mbps speed/150 GB monthly usage allowance. The Commission then should issue a public notice in year three and year seven of RDOF funding proposing updated performance requirements based on the then-comparable urban broadband speeds/usage allowances. After receiving public comment,[82] the Commission would announce new RDOF performance requirements applicable in year four and year eight of RDOF funding through a subsequent public notice, with any entity able to show good cause why it cannot or should not meet the new requirements able to seek a Commission waiver.[83] This mechanism would allow the Commission to ensure that reasonable comparability remains the bedrock of the Commission's high-cost programs and consumers receive supported services meeting their present (and future) broadband needs.

IV. THE COMMISSION SHOULD DETERMINE THE AREAS ELIGIBLE FOR RDOF PHASE I FUNDING BASED ON EXISTING DATA AND HOLD OFF ON LOWERING THE HIGH-COST THRESHOLD

The Commission should determine the areas eligible for RDOF Phase I support without delay based on currently-available data and only consider lowering the high-cost threshold in later rounds to provide funding to areas where potential end-user revenue alone has not sufficiently incentivized broadband deployment.[84] In its initial comments, ACA Connects

[80] ACA Connects Comments at 15-16 (citing *Connect Am. Fund*, *et al.*, WC Docket No. 10-90, *et al.*, Report and Order, 29 FCC Rcd 15644, para. 29 (2014) ("*2014 CAF Phase II Order*")).

[81] GeoLinks Comments at 2.

[82] Stakeholders would be able to challenge the comparability of the proposed performance requirements to the services offered in urban areas during the comment period.

[83] *See* 47 C.F.R. § 1.3.

[84] *See NPRM* at paras. 48 (proposing to use the most recent Form 477 data to determine the census blocks eligible for RDOF Phase I support), 51 (requesting comment on whether the

supported the Commission's plan to use the most current Form 477 data, combined with a robust challenge process, to determine the census blocks eligible for RDOF Phase I support.[85] While other stakeholders have offered varying proposals to improve the accuracy of broadband deployment information, ACA Connects demonstrated that none of these proposals would be implemented in the near-term and certainly not before the RDOF Phase I auction is planned to begin. Thus, ACA Connects submitted that Form 477 data, although not without flaws, would allow the Commission to target wholly unserved areas most in need of support first through RDOF Phase I while more granular data are gathered through the ongoing Digital Opportunity Data Collection ("DODC") proceeding to guide RDOF Phase II.[86]

Many commenters agreed with ACA Connects that the time for action on RDOF Phase I is now.[87] Critically, NTCA pointed out that concerns regarding broadband deployment data granularity should not be an issue in census blocks where "literally no provider whatsoever" reported that it offers service meeting the Commission's proposed Baseline.[88] In these areas, the Commission already has sufficient information indicating that consumers lack access to high-performance broadband services. NTCA correctly observed that "granularity and accuracy are not the same thing" and a strong challenge process would be necessary to correct reporting

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Commission should lower the high-cost threshold to make additional locations eligible for RDOF Phase I funding).

85 ACA Connects Comments at 19-20.

86 *Id.* at 20 (citing *Establishing the Digital Opportunity Data Collection, Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195, 11-10, Report and Order and Second Further Notice of Proposed Rulemaking, FCC 19-79 (Aug. 6, 2019) ("*DODC Order/FNPRM*")).

87 *See, e.g.*, NTCA Comments at 31-32; ITTA Comments at 4; INCOMPAS Comments at 12; WISPA Comments at 16-20; NRECA Comments at 3; CETF Comments at 8; WV Comments at 3, 6; Joint Comments of the Pennsylvania Public Utility Commission, Office of Consumer Advocate and the Office of Small Business Advocate, WC Docket Nos. 19-126, 10-90, at 25 (Sep. 20, 2019) ("PA Comments").

88 NTCA Comments at 32 (emphasis omitted).

errors regardless of the broadband coverage dataset relied on by the Commission.[89] ACA Connects agrees with NRECA that "waiting for the availability of more granular data before moving forward would only punish those millions of Americans that we know do not have access to digital opportunity" based on available information.[90] As CenturyLink found, to the extent the Commission can rely on "existing tools" (*i.e.*, Form 477 data) to quickly identify wholly unserved census blocks, it should determine the areas eligible for RDOF Phase I support without delay.[91] Form 477 submissions, while not perfect, clearly demonstrate that "[t]here are Americans who lack access to broadband service who can be helped even with flawed data."[92] To reach these consumers quickly and efficiently, as proposed in the *NPRM*, the Commission needs a common dataset covering a wide array of providers and, "[a]t present, the only such format is the FCC's Form 477 data."[93]

Multiple stakeholders also stressed that no established timeframe exists for when more granular data will be available.[94] Estimates for the completion of the DODC proceeding varied significantly in the record, ranging from a minimum of one year to as high as three years.[95] As one commenter summed up the current situation, "[i]t is not known at this time when the rules will be established, when they will be effective and what standards broadband providers will be

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[89] *Id.* at 36-38.

[90] NRECA Comments at 3 (internal brackets omitted).

[91] Comments of CenturyLink, WC Docket Nos. 19-126, 10-90, at 8 (Sep. 20, 2019) ("CenturyLink Comments").

[92] PA Comments at 25. *See* CPUC Comments at 8 (supporting the Commission's emphasis on prioritizing funding to wholly unserved areas through RDOF Phase I).

[93] WV Comments at 6. *See* WISPA Comments at 31 ("In the absence of the broadband-serviceable location fabric and the polygon submissions contemplated by the DODC FNPRM, however, the Commission must rely on the most current Form 477 information and challenge processes.").

[94] *See, e.g.*, ITTA Comments at 4; WISPA Comments at 29-20; WV Comments at 3.

[95] *See* ITTA Comments at 4 (stating that it is likely to be well over a year before more granular broadband deployment is available); WV Comments at 6 (estimating it will take three years for such data to be available).

required to meet."[96] In the absence of a clear timeframe for obtaining improved data, there is no reason to wait one year (let alone three) to move forward with RDOF Phase I when existing Form 477 information would enable the Commission to target wholly unserved census blocks for much-needed support now.[97]

While some stakeholders advocated delaying RDOF Phase I while more granular broadband deployment data are collected, the Commission should not fall into the trap of letting the perfect become the enemy of the good.[98] Specifically, USTelecom and other incumbent price cap carrier representatives asked that RDOF Phase I be postponed indefinitely until the Commission adopts the Broadband Serviceable Location Fabric ("Fabric") it helped develop.[99] The Commission should not grant this request. First, even USTelecom conceded that the Fabric proposal leaves many questions unanswered, such as what locations (and what kinds of

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[96] WISPA Comments at 16-17. *See* INCOMPAS Comments at 12 ("[W]aiting for the FCC to complete its new broadband map based on polygon filings could unduly delay the auction.").

[97] For similar reasons, ACA Connects supports the Commission's proposal to use the CAM to establish the reserve prices for the areas eligible for RDOF Phase I support. *See NPRM* at para. 54. As with the Form 477 data, the CAM is not perfect. But as ACA Connects and others explained, the CAM remains the most objective measure of per location service cost available today even with its shortcomings. ACA Connects Comments at 23-24. *See* NTCA Comments at 18 ("The model, while not perfect or accurate in every instance . . . remains the best available standardized means of estimating the costs of deploying and operating a forward-looking network across wide swaths of rural America."); Conexon Comments at 4 ("Whether or not one agrees with the model's precision, the cost model produces a thorough, highly detailed and vetted set of data."); NRECA Comments at 12 (asserting the CAM "appears well-suited for projecting costs for deploying advanced broadband technologies in rural areas."); *see also* UTC Comments at 16 ("UTC supports the Commission's proposals for setting the reserve price based upon the CAM."). The Commission recently affirmed that "[t]he CAM is the best current objective data we have combining cost and locations." *Puerto Rico/USVI Order* at para. 19. ACA Connects submits that using the CAM would allow the Commission to set reserve prices high enough to promote participation in the RDOF Phase I auction while preserving the Commission's role as USF steward.

[98] *See, e.g.*, U.S. Cellular Comments at 11; USTelecom Comments at 11-12; Windstream Comments at 7-8; CPUC Comments at 3; NC Comments at 2; Comments of Frontier Communications Corporation, WC Docket Nos. 19-126, 10-90, at 6-9 (Sep. 20, 2019) ("Frontier Comments").

[99] USTelecom Comments at 11-12. *See* Frontier Comments at 5-6; Windstream Comments at 7-9.

locations) are serviceable and how to ensure the accuracy of the data produced.[100] Thus, even if the Commission adopts the Fabric, disputes would still exist over the new coverage data produced. ACA Connects concurs with NTCA that such disputes can be resolved now through a robust challenge process without having to wait for much-needed improvements to the Fabric.[101] ACA Connects further notes that there is no indication that the Commission will adopt the Fabric, or do so any time soon. In fact, the Commission recently expressed concern that the Fabric would impose substantial costs and unnecessary complexity on smaller broadband providers and take significant time to implement.[102]

Second, the Commission already considered the possibility that existing Form 477 data may overstate or understate the number of serviceable locations and proposed a true-up process similar to that implemented for CAF Phase II model-based support to address this issue.[103] As the Commission highlighted in the *NPRM*, no CAF Phase II model-based carrier has asked it to modify the number of serviceable locations to date.[104] Thus, calls for more specific location data are, at best, premature and, at worst, would delay RDOF Phase I without any concomitant benefit.

Third, as incumbent carriers once recognized, there are substantial, tangible costs to delay. When the Commission requested feedback on whether it should hold off on providing CAF Phase II model-based support to incumbent carriers in order to subject all price cap areas

[100] Joint Comments of USTelecom Association – The Broadband Association, ITTA – The Voice of America's Broadband Providers and the Wireless Internet Service Providers Association, WC Docket Nos. 19-195, 11-10, at 13-18 (Sept. 23, 2019).

[101] NTCA Comments at 36-37.

[102] *DODC Order/FNPRM* at para. 31. *See Puerto Rico/USVI Order* at para. 20 (declining to delay transition to competitive support mechanism in order to receive additional carrier-submitted deployment data).

[103] *NPRM* at para. 30.

[104] *Id.*

to competitive bidding, the incumbent carriers claimed that "[f]urther delay is untenable and would leave millions of consumers without access to broadband and the tools they need to be full participants in the information age."[105] They further argued that "[i]t would be futile for the Commission to continue to wait for a perfect consensus, as one will never emerge" regarding the proper distribution of high-cost support.[106] ACA Connects submits that what was true then about CAF Phase II funding is just as true now about RDOF support. ACA Connects therefore recommends that Commission move forward to determine the areas eligible for RDOF Phase I support based on the most-current data available and backed by a robust challenge process to check the data's accuracy.[107]

ACA Connects also recommends that the Commission hold off on lowering its longstanding high-cost threshold until at least RDOF Phase II.[108] As ACA Connects illustrated in its initial comments, the Commission should not reward incumbent carrier inaction or provide

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[105] *See, e.g.*, Joint Comments of AT&T, CenturyLink, FairPoint, Frontier, Verizon, and Windstream, WC Docket No. 10-90, *et al.*, at 4 (Aug. 24, 2011).

[106] Joint Reply Comments of AT&T, CenturyLink, FairPoint, Frontier, Verizon, and Windstream, WC Docket No. 10-90, *et al.* at 1 (Sep. 6, 2011).

[107] Regardless of the approach it ultimately takes for determining eligible areas, the Commission should ensure that adequate safeguards remain in place to prevent overbuilding existing providers. ACA Connects Comments at 22-23. *See* NTCA Comments at 20, n. 30 ("In determining eligible areas, the Commission will need to ensure that any funds awarded through the RDOF will not go to support the deployment of a redundant network."); Verizon Comments at 8-9 (warning that the RDOF program should not offer duplicative support). RDOF support should be used "to leverage – not displace – private capital expenditures." Statement of Chairman Ajit Pai, Federal Communications Commission, Hearing on Oversight of the Federal Communications Commission, Before the United States Senate Committee on Commerce, Science, and Transportation, at 1 (June 12, 2019), available at https://www.fcc.gov/document /chairman-pais-testimony-senate-commerce-committee (last accessed Oct. 12, 2019). As a result, the Commission should require RDOF support recipients to certify under Section 54.314 that they use the funding only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. *NPRM* at para. 33. *See* 47 C.F.R. § 54.314. The Commission also should require all RDOF support recipients to certify in their long-form applications that they will not use the facilities constructed to provide any service in ineligible areas. Imposing these safeguards would help ensure that scarce RDOF support only is used to construct networks that provide service in eligible areas and not to undermine competition.

[108] *NPRM* at para. 51.

RDOF funding in areas where the business case for deployment already exists.[109] Instead, it should allow recent regulatory and legislative measures designed to reduce deployment costs to take hold and incentivize new buildouts in "lower-cost" areas before considering threshold adjustments.[110] At a minimum, ACA Connects urged the Commission to obtain additional data from incumbent carriers in these areas to determine why buildouts have not occurred to date prior to diverting any RDOF funding from existing high-cost areas where it is undisputed that support is needed.[111]

Like ACA Connects, NTCA advised caution regarding any adjustments to the high-cost threshold.[112] NTCA warned that "there is no information provided in the NPRM to assess how this concept might affect the contours of the auction, making it impossible to determine whether this might result in massive shifts of available budgetary resources to more densely populated areas at the expense of more rural consumers and census blocks."[113] NTCA thus advised the Commission to hold off on adjusting the high-cost threshold to "drive results in or to direct funding toward certain areas."[114] Verizon similarly pushed for restraint, asserting the Commission should not direct a disproportionate amount of the RDOF budget to certain areas, thereby reducing the overall number of locations receiving support.[115] PDI also strongly opposed including non-high-cost areas in RDOF Phase I and stated that "[t]he commercial market will/should take care of these."[116]

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[109] ACA Connects Comments 21-22.

[110] *Id.* at 21.

[111] *Id.* at 21-22.

[112] NTCA Comments at 33.

[113] *Id*.

[114] *Id.* at 19.

[115] Verizon Comments at 9-10.

[116] PDI Comments at 10.

Out of the few commenters expressing support for lowering the high-cost threshold, none provided any analysis demonstrating that the change would not result in the disproportional RDOF budgetary shifts warned about by NTCA and Verizon.[117] Indeed, NRECA acknowledged that it may be better for the Commission to defer including lower-cost areas until RDOF Phase II, when more broadband deployment information should be available.[118] ITTA averred that the lack of broadband deployment in lower-cost areas "may" be evidence that the threshold is not a good benchmark to evaluate current service costs.[119] But even if that were true, it would support ACA Connects' recommendation that the Commission first gather information from incumbent carriers before making high-cost threshold adjustments that could have detrimental long-term consequences for the RDOF and future high-cost mechanisms. The Commission therefore should hold off on lowering its high-cost threshold until at least RDOF Phase II to give it time to fully study this issue.

V. THE COMMISSION SHOULD STREAMLINE THE SHORT-FORM APPLICATION REQUIREMENTS FOR EXISTING SERVICE PROVIDERS

The Commission should require less technical and financial information at the RDOF short-form application stage from existing service providers who plan to bid on

[117] *See, e.g.*, ITTA Comments at 12; UTC Comments at 15; NRECA Comments at 6. ACA Connects notes that disproportionate shifts in budgetary resources also would occur if the Commission prioritizes RDOF support to areas that currently lack 10/1 Mbps broadband service. *See NPRM* at para. 60. While this proposal garnered some support in the record, none of the commenters provided any details on how such a prioritization mechanism would work in practice or its impact on the RDOF budget. *See, e.g.*, GeoLinks Comments at 2-3; WISPA Comments at 30; UTC Comments at 16; PA Comments at 15, 21. ACA Connects remains concerned that such prioritization would undermine the effectiveness of the RDOF auction, as the additional support going to a few prioritized areas would leave less support to fund deployment in more areas overall. ACA Connects Comments at 21, n. 75. *See* NTCA Comments at 19; PDI Comments at 13; *see also* USTelecom Comments at 43 (indicating that prioritization may result in overbuilding of broadband networks scheduled to be deployed by incumbent price cap carriers during the final year of CAF Phase II model-based support).

[118] NRECA Comments at 6.

[119] ITTA Comments at 12.

performance/latency tiers matching their current service offerings.[120] ACA Connects agreed with the Commission that the key information proposed to be collected through the RDOF short-form application often can be obtained through Form 477 filings of existing providers.[121] ACA Connects therefore urged the Commission to streamline the RDOF short-form application process for entities with a proven track record (*e.g.*, three years or more) of providing quality broadband service to consumers.[122]

Many commenters backed ACA Connects' position. As with ACA Connects, NCTA requested that the Commission streamline the RDOF application process for existing providers "as much as possible" by relying on available operational information.[123] GeoLinks argued that, unless the Commission has specific concerns regarding the ability of existing providers to meet their RDOF obligations, "it is reasonable to refrain from requiring them to submit brand new or repetitive info to prove their auction-worthiness."[124] The West Virginia Broadband Enhancement Council similarly highlighted the unnecessary costs imposed on existing provider applicants by

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[120] *See NPRM* at para. 80 (asking whether the Commission should lower the RDOF short-form application requirements imposed on existing providers).

[121] *NPRM* at para. 80; ACA Connects Comments at 25-26. *See, e.g.*, NCTA Comments at 9; GeoLinks Comments at 15; WV Comments at 11.

[122] ACA Connects Comments at 25-26. ACA Connects likewise recommended that the Commission require less technical and financial information from applicants that qualified to participate in the CAF Phase II auction. *See id.* at 25, n. 95 (citing *NPRM* at para. 80). Like existing service providers, CAF Phase II auction participants already demonstrated that they have the ability to build and maintain networks while meeting their public interest obligations. *See* Sacred Wind Comments at 3-4 ("[T]he Commission should provide an abbreviated short-form application process for CAF Phase II auction winners."); GeoLinks Comments at 15 ("[A]pplicants that the Commission deemed qualified to bid in the CAF auction have already made a strong showing of their technical and financial capabilities."). In addition, ACA Connects notes that CoBank raised a number of potentially worthwhile proposals in its reply comments to ease the letter of credit requirements for smaller service providers. *See* Reply Comments of CoBank, ACB, WC Docket Nos. 19-126, 10-90, at 2-6 (Oct. 17, 2019). The Commission should explore these proposals further in order to create a more level playing field for potential RDOF applicants.

[123] NCTA Comments at 9.

[124] GeoLinks Comments at 15.

having them re-submit data already available to the Commission to participate in the RDOF.[125] These comments show that streamlining the short-form application process for existing providers will help conserve both provider and Commission resources that are better directed at spurring broadband deployment through the RDOF.

However, ACA Connects appreciates the concerns raised by some stakeholders about applying the streamlined RDOF short-form application process too broadly.[126] ACA Connects concurs with NRECA that just because an applicant previously filed a Form 477 "does not necessarily demonstrate the requisite operational experience" to bid at all performance/latency tiers at the RDOF auction.[127] ACA Connects likewise agrees with USTelecom and Verizon that a streamlined RDOF short-form application process may not be appropriate for existing providers who plan to bid on performance/latency tiers for which they currently do not provide service.[128] The streamlined process also may not be appropriate for existing providers proposing to "utilize new, unproven technologies or proposing data rates beyond generally accepted standards for the technology."[129] ACA Connects submits that the Commission can address these concerns by making the streamlined process only available to existing providers who plan to bid on performance/latency tiers matching their current service offerings. The information contained in the Form 477 filings of such providers should give the Commission "sufficient assurance before the auction that an entity has demonstrated that it has the ability to

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125 WV Comments at 11.

126 *See, e.g.*, USTelecom Comments at 18-19; Verizon Comments at 8.

127 NRECA Comments at 12.

128 *See* USTelecom Comments at 18-19 (noting the difficulties in assessing an applicant's ability to meet its RDOF deployment obligations "when the service tier it plans to bid in is well above its current offerings"); Verizon Comments at 8 (asserting that the Commission should closely review RDOF applicants planning to bid on performance/latency tiers in which they currently provide little or no commercial service).

129 NRECA Comments at 8.

build and maintain a network" at the bid-upon performance/latency tiers.[130] If the Commission has any questions about the qualifications of a particular entity to provide its current service offerings in areas it plans to bid on at the auction, it can always request further information before allowing the entity to participate in the RDOF.[131] Consequently, the Commission should allow existing providers who plan to bid on performance/latency tiers that match their current service offerings to submit less technical and financial information at the RDOF short-form application stage.[132]

VI. THE COMMISSION SHOULD PROVIDE LIMITED ADDITIONAL SUPPORT TO TRANSITIONING PRICE CAP CARRIERS

The Commission should provide limited additional support to price cap carriers that accepted CAF Phase II model-based funding to ensure that consumers retain access to

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[130] *NPRM* at para. 74.

[131] *See Connect Am. Fund Phase II Auction Scheduled for July 24, 2018, Notice and Filing Requirements and Other Procedures for Auction 903*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 33 FCC Rcd 1428, para. 77 (2018) (stating the Commission can request further information from an applicant if the information provided in its short-form application is insufficient to show that the applicant is capable of meeting its deployment obligations) ("*2018 CAF Phase II Notice*"). As a result, there is no need for providers to submit detailed operational and system design information at the short-form application stage, as suggested by some commenters. *See, e.g.*, USTelecom Comments at 19; Verizon Comments at 8; NRECA Comments at 13. These commenters ignore the fact that the Commission's proposed RDOF application process already requires applicants to take potential buildout issues into account and imposes substantial penalties on those that fail to meet their deployment commitments. *See NPRM* at paras. 82-83 (proposing to incorporate CAF Phase II auction procedures requiring applicants to show that they can deliver service at the requisite performance/latency tiers to at least 95 percent of the required number of locations by the end of the six-year buildout period and for the duration of the 10-year support term assuming a 70 percent subscription rate). This process would provide sufficient incentive for RDOF applicants to consider potential buildout challenges in their short-form applications and plan accordingly.

[132] Specifically, the Commission should exempt such providers from having to submit the operational history, technology type, spectrum access, and financial information requested on the RDOF short-form application. ACA Connects Comments at 25-26. The Commission should instead require such providers to file a certification, similar to that proposed in the *NPRM*, stating they are technically and financially capable of meeting their RDOF public interest obligations. *See NPRM* at para. 71. The other short-form application requirements would remain the same.

supported services while it implements the RDOF.[133] The six-year CAF Phase II model-based support term is scheduled to end in 2020.[134] But as established by ACA Connects in its initial comments, it is unlikely that the Commission will be able to complete both phases of the RDOF auction before the CAF Phase II model-based support term ends.[135] ACA Connects therefore recommended that the Commission allow all price cap carriers that accepted model-based support the option to elect an additional year of funding in 2021 in exchange for meeting their existing public service obligations.[136] ACA Connects further advised – consistent with Commission precedent – that any continued support should be of "limited scope and duration" and that the Commission should transition model-based support to RDOF funding as soon as possible to ensure the future integrity of the Commission's high-cost programs.[137]

No commenter opposed offering incumbent model-based price cap carriers the option to elect an additional year of funding.[138] As NTCA noted, while the RDOF is aimed at spurring

[133] *See NPRM* at para. 94 (seeking comment on how best to transition price cap carriers from CAF Phase II model-based support through the RDOF).

[134] *2014 CAF Phase II Order* at para. 31.

[135] ACA Connects Comments at 27. *See, e.g.*, CenturyLink Comments at 2; ITTA Comments at 29; USTelecom Comments at 29-31; Frontier Comments at 16; Windstream Comments at 23-24; ADTRAN Comments at 15; *see also NPRM* at para. 101 (stating that the RDOF auction "is unlikely to conclude before model-based support for price cap carriers is expected to end").

[136] ACA Connects Comments at 27. *See* Frontier Comments at 16 (asserting that "the Commission's earlier determination that price cap carriers will be required to continue providing voice and broadband services to their customers in exchange for the continuation of support should prevail").

[137] ACA Connects Comments at 28 (citing *Connect Am. Fund*, *et al.*, WC Docket No. 10-90, *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, para. 178 (2011) ("*2011 USF Transformation Order*")).

[138] *See* CenturyLink Comments at 2 ("To best accomplish a smooth transition to the RDOF program the Commission should continue with CAF II model support . . . at least through the end of calendar year 2021."); Windstream Comments at 23 ("The Commission should clarify that price cap carriers receiving CAF Phase II model-based support are entitled to a full, seventh year of funding in 2021."); USTelecom Comments at 32 ("[T]he Commission should reaffirm that it will offer all CAF Phase II Model ETCs a seventh year of support across their territories.").

broadband deployment to those that are unserved today, "[i]t is an equally important public policy and statutory goal to ensure those who are connected stay connected."[139] Many commenters found the proposed seventh year of support consistent with the Commission's long-held aversion to funding "flash-cuts" to avoid disruptions to supported services relied on by consumers.[140] Stakeholders contended that the additional funding year would allow the Commission to focus on completing the RDOF auction in 2021, while providing regulatory certainty to price cap carriers for budgetary and operations planning.[141] Because ACA Connects remains concerned that consumers may be harmed "[w]ithout continued support and obligations that are tied to that support," it recommends that the Commission allow incumbent model-based price cap carriers to elect an additional year of funding for 2021.[142]

To ensure a timely transition, the Commission should adopt a process to phase down an incumbent carrier's support in areas where the carrier is not the winning bidder at the RDOF auction.[143] ACA Connects concurs with other stakeholders that the Commission should make sure that consumers continue to have access to supported services through a support phase-down process as RDOF winning bidders begin work on their deployments.[144] As ADTRAN

[139] NTCA Comments at 34 (emphasis omitted).

[140] *See* ITTA Comments at 30 (arguing that "sudden cuts in carriers' support can harm consumers and potentially lead to their loss of service, outcomes that by their very nature contravene the public interest"); USTelecom Comments at 32 (claiming that the offer of a seventh year of support furthers the principle of "no flash cuts"); Windstream Comments at 23 (same).

[141] CenturyLink Comments at 2, 6; USTelecom Comments at 32.

[142] Comments of the Nebraska Public Service Commission, WC Docket Nos. 19-126, 10-90, at 6 (Sep. 20, 2019) ("NPSC Comments").

[143] ACA Connects suggested in its initial comments that the Commission terminate all support for non-winning incumbent carriers at the end of 2021. ACA Connects Comments at 26. However, after reviewing the record, ACA Connects does not support such a flash-cut in support, which may lead to unnecessary disruptions in consumer access to supported services.

[144] *See* Frontier Comments at 15 (arguing that "the Commission's focus should be squarely on ensuring that all consumers retain their voice and broadband service during the transition");

observed, without a support phase-down process "there is a likelihood that subscribers could lose service during the period when the RDOF grantee is authorized to receive support and when it actually commences service."[145] It is unreasonable to expect RDOF winning bidders who are new entrants to an area to begin providing service to all consumers previously covered by the incumbent carrier on day one of program support. ACA Connects therefore shares NPSC's concern that some phase-down support is necessary to fill this gap and prevent incumbent carriers from terminating services to consumers in anticipation of exiting the market.[146] This approach also would be consistent with precedent, as the Commission recently adopted a similar phase-down process in the *Puerto Rico/USVI Order* to avoid disrupting consumer access to supported services as it transitions to a more competitive funding process.[147] ACA Connects therefore echoes other commenters in urging the Commission to adopt a funding phase-down process that would decrease the amount of support provided to the incumbent carrier as the RDOF winning bidder hits the required deployment milestones in an area.[148] Importantly, the phase-down funding received by the incumbent carrier would be based on the support awarded to the RDOF winning bidder as determined through the auction, not legacy CAF Phase II support as determined through the cost model. In the *NPRM*, the Commission concluded that it should rely on market-based mechanisms whenever possible to determine the most efficient use of its limited RDOF funds.[149] The CAF Phase II auction demonstrated that using competitive bidding to award support spurs broadband deployment far

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ADTRAN Comments at 15 (claiming that transitional support is necessary to help consumers "avoid a loss of service or precipitous price increase").

[145] ADTRAN Comments at 15.

[146] NPSC Comments at 6-7.

[147] *Puerto Rico/USVI Order* at para. 88.

[148] *See, e.g.*, Frontier Comments at 17-18; ADTRAN Comments at 15; Windstream Comments at 22-23; USTelecom Comments at 29-31.

[149] *NPRM* at para. 9.

more efficiently than relying on the cost model.[150] Thus, the Commission should not continue to disburse CAF Phase II model-based support where the RDOF auction identified a more cost-effective funding benchmark for an area. Commenters supporting continued provision of CAF Phase II model-based support after the auction provide no evidence that such funding is necessary to maintain consumer access to supported services or the most cost-effective use of Commission support going forward.[151] In fact, the Commission recently concluded that an extended period of legacy funding was unnecessary to prevent disruption to consumer access to supported services in the *Puerto Rico/USVI Order*.[152] Consequently, ACA Connects recommends that the phase-down transitional funding received by incumbent carriers should be determined by "the support level of the winning bidder" at the RDOF action.[153]

VII. THE COMMISSION SHOULD ADOPT PRINCIPLES TO FACILITATE STATE BROADBAND PROGRAM ENGAGEMENT

Recognizing that the USF is a federal-state partnership at its heart, the Commission should adopt principles to facilitate state broadband program engagement as part of the

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[150] *See 2018 CAF Phase II Notice* at para. 1.

[151] *See* USTelecom Comments at 29-31; Windstream Comments at 23-24.

[152] *See Puerto Rico/USVI Order* at para. 90 (concluding that an extended period of legacy support was unnecessary to prevent disruption to supported services).

[153] ITTA Comments at 31. The Commission also should address situations where an area is not won at the RDOF auction in either Phase I or Phase II. *See id.* at 29 (suggesting that transitional support to incumbent model-based price cap carriers likely will be necessary beyond 2021); Frontier Comments at 16 (same); Windstream Comments at 23-24 (same). In these situations, the Commission would not have the benefit of a new support benchmark established through competitive bidding to help determine transitional support levels. As ACA Connects and other stakeholders noted, the Commission previously recognized this potential issue and indicated that incumbent carriers could continue offering "reasonably comparable" broadband services beyond the original funding term "in exchange for ongoing CAF Phase II support." *2011 USF Transformation Order* at para. 163. *See, e.g.*, ACA Connects Comments at 27; USTelecom Comments at 29; Frontier Comments at 19. ACA Connects submits that this approach strikes the correct balance between preserving limited high-cost funds and ensuring consumers do not lose access to supported services as the Commission works to eventually auction off these areas.

RDOF.[154] The Commission does not need to go it alone as it seeks to spur broadband deployment to unserved areas. The record shows that a majority of states already have or are developing programs to provide support for the deployment and/or maintenance of broadband networks.[155] The Commission should work closely with these state programs to ensure the most "bang" for each federal dollar spent through the RDOF while recognizing the broadband deployment challenges and opportunities unique to each state.

Multiple commenters – including ACA Connects – highlighted the benefits of leveraging the financial and administrative resources offered by state broadband programs to help advance the RDOF's service and deployment goals.[156] As an example, the CPUC stated that not only can federal-state partnerships result in additional funding to support broadband deployment in more locations, this additional funding can incentivize providers to deliver higher-performance services than those that would be offered with only federal support.[157] Other stakeholders, such as U.S. Cellular, asserted that combining state funding with federal support "can accelerate infrastructure development" and lead to shorter broadband deployment timeframes than those achieved with only federal support.[158] In addition to facilitating buildouts of higher-performance

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[154] *See NPRM* at para. 13 (noting that the "the Universal Service Fund is a federal-state partnership" and requesting comment on ways the RDOF can facilitate that partnership). *See* U.S. Cellular Comments at 3-4 (stating that Congress intended the states to shoulder at least some of the USF burden).

[155] *See* CPUC Comments at 7 (stating that approximately thirty states have or are developing a broadband program); U.S. Cellular Comments at 3-4 (remarking that multiple states have universal service mechanisms supporting broadband deployment); NPSC Comments at 2-3 (discussing Nebraska's efforts to dedicate capex broadband buildout funding for areas not included in the Commission's CAF Phase II price cap support areas).

[156] ACA Connects Comments at 28-30. *See, e.g.*, CPUC Comments at 5-6; U.S. Cellular Comments at 4; USTelecom Comments at 40-41; NC Comments at 3.

[157] CPUC Comments at 6-7.

[158] U.S. Cellular Comments at 4. *See* NPSC Comments at 2 (stating that Nebraska required price cap carriers receiving state support to complete buildouts within two years of deployment project approval).

networks in shorter timeframes, state programs also are best-positioned to address the particular physical barriers (*i.e.*, challenging terrain) and economic barriers (*i.e.*, customer adoption issues) to broadband deployment in their territories.[159] It would be difficult, if not impossible, for the Commission to structure the RDOF to tackle such issues without making the program needlessly complex and inefficient. Many commenters further stressed that robust federal-state partnerships can ensure that the Commission and states remain on the same page regarding their broadband objectives and avoid the use of federal funds to overbuild existing high-performance networks covered by state programs.[160] Federal-state partnerships also can represent a win for service providers by reducing the overall burden on USF contributors and, ultimately, consumer ratepayers.[161]

As the comments demonstrate, the potential benefits of federal-state broadband deployment partnerships are significant. ACA Connects therefore joins other stakeholders in recommending that the Commission adopt rules to facilitate state broadband program engagement in the RDOF.[162] In particular, ACA Connects agrees with the CPUC that the Commission's CAF Phase II partnership with New York state provides a solid framework to build

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[159] *See* USTelecom Comments at 40-41 (discussing states' "closer proximity to end users and their knowledge of the particular issues that impede adoption in areas where broadband is available").

[160] NC Comments at 3. *See* DoIT Comments at 3 ("Robust lines of communication and coordination will help ensure optimal outcomes that advance state and federal broadband policy alike, while avoiding waste of public funds.").

[161] *New York Waiver Order* at para. 40. Reducing the USF burden on providers has only become more pressing with the contribution factor at an all-time high. *Proposed Fourth Quarter 2019 Universal Serv. Contribution Factor*, CC Docket No. 96-45, Public Notice, DA 19-910 (Sep. 12, 2019) (announcing a 25 percent proposed USF contribution factor).

[162] *See, e.g.*, CPUC Comments at 5-6, U.S. Cellular Comments at 4, USTelecom Comments at 40-41; NC Comments at 3.

on for potential federal-state RDOF engagement.[163] As the CPUC explained, the Commission established safeguards in the CAF Phase II partnership with New York state to ensure support was allocated in a transparent and efficient manner.[164] The Commission should adopt similar threshold requirements for any federal-state partnerships established under the RDOF.[165] Adopting such threshold requirements will ensure that federal-state partnerships do not undermine the RDOF's aims or create conflicting regulatory regimes governing the receipt of broadband deployment support.

Beyond these threshold requirements, the Commission should impose additional obligations on states wishing to partner with it under the RDOF. As ACA Connects examined in its initial comments, there are costs to the Commission from state broadband program engagement, not only in terms of the time and resources spent developing partnerships but also from the potential risk that the state programs prove ineffective.[166] As a result, having state support recipients meet only the basic requirements imposed on all RDOF support recipients is not enough to ensure that a federal-state partnership results in more rapid deployment of higher-performance broadband networks than under a federal-only approach. Thus, the Commission should adopt the following five principles for engagement with state broadband deployment programs:

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[163] *See* CPUC Comments at 5-6 ("The CPUC recommends that the final rules for the RDOF include an option for states to pursue a federal-state partnering approach, similar to the one authorized for the State of New York."); *see also New York Waiver Order* at para. 26.

[164] CPUC Comments at 6. *See* ACA Connects Comments at 31-32.

[165] At a minimum, states partnering with the Commission should be required to show that support under their programs would be limited to unserved areas and awarded through a competitive bidding mechanism that maximizes participation by all providers, including smaller providers that may not have previously participated in broadband deployment programs. States also should require their support recipients to comply with all Commission eligibility, public interest, financial, technical, and reporting/accountability requirements established for the RDOF. Moreover, each state support award should be submitted for final review and approval by the Commission under an expedited process established by the Commission.

[166] ACA Connects Comments at 29.

- First, the state must demonstrate that its program requires a support recipient to provide broadband service with performance characteristics (*e.g.*, speed and latency) that substantially exceed the Commission's RDOF Baseline performance requirements.
- Second, the state must require a program support recipient to deploy a network covering all required locations substantially faster than the timing required by the Commission under the RDOF (*i.e.*, 100 percent deployment by the end of the third year of support).
- Third, the state must utilize a competitive bidding process that grants sufficient, but not excessive, funding to providers to meet these enhanced performance and deployment obligations.
- Fourth, to give a state a meaningful stake in ensuring the success of its program, it must match RDOF funding in two respects. On one hand, the state must make funding available in an amount equal to, or greater than, the aggregate amount that the RDOF competitive bidding process makes available for the state's unserved areas. On the other hand, the state must at least match the amount of RDOF funding awarded by the Commission.
- Fifth, the state must request and obtain approval from the Commission for its RDOF partnership proposal, with the proposal subject to the notice and comment process allowing for a comprehensive assessment of whether the partnership meets Commission requirements and advances the public interest.[167]

Adopting these principles would allow the Commission to retain ultimate oversight over the distribution of RDOF support and foster innovative programs that will bring high-performance broadband services to unserved areas more quickly and efficiently than if the Commission goes

[167] These principles received support from New York state as a model for federal-state broadband deployment partnerships. *See* Letter from John M. Beahn, Counsel to Empire State Development, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90, *et al.*, at 2 (Jan. 17, 2017).

it alone. Accordingly, in light of the clear benefits of federal-state partnerships identified in the record, the Commission should adopt principles to facilitate state broadband program engagement under the RDOF.[168]

VIII. CONCLUSION

In these reply comments, ACA Connects joins other stakeholders in supporting the Commission's plan to spur deployment of high-performance broadband networks in a cost-efficient manner through the RDOF. ACA Connects agrees with other commenters that the Commission should take action to maximize RDOF auction participation, thereby increasing competition and the overall cost-effectiveness of the program, and improve the overall structure and implementation of the program. By adopting RDOF auction procedures that are fair,

[168] While the Commission should facilitate state broadband program engagement under the RDOF, it should not prioritize funding or otherwise grant a preference to state support recipients to receive RDOF funds, as some commenters suggested. *See, e.g.*, CETF Comments at 12. First, the commenters supporting this approach provide no methodology for how such a prioritization mechanism would work in practice. Second, this approach would undermine competition at the RDOF auction considering the Commission plans to have "bidders compete for support across all areas at the same time." *NPRM* at para. 21. As the Commission observed, "inter-area competition . . . ultimately drove down the support required to provide service" in the CAF Phase II auction and the Commission "seek[s] to have a similarly efficient outcome" for the RDOF auction. *Id.* at para. 17. Establishing a prioritization mechanism for providers receiving state funds would give these providers an unfair advantage over providers in states without broadband programs, reducing inter-area competition and the RDOF's overall cost-effectiveness. Finally, this approach assumes that state broadband programs are already up and running. But as discussed above, some states still are in the process of developing broadband programs and may not be able to launch such programs until after the RDOF auction.

reasonable, and easy to implement, the Commission will ensure the success of the program and take a major step towards closing the digital divide.

Respectfully submitted,

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