

April 1, 2021

VIA ECFS

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

Re: Rural Digital Opportunity Fund Auction, AU Docket No. 20-34; Rural Digital Opportunity Fund, WC Docket No. 19-126; Connect America Fund, WC Docket No. 10-90

Dear Ms. Dortch:

The undersigned (“Joint Filers”) seek to ensure the successful deployment of broadband to rural America using a variety of technologies. However, we are concerned that Rural Digital Opportunity Fund (“RDOF”) Phase I locations that have been defaulted on or that may be defaulted on in the future could be barred from receiving support from other federal, state, and local programs if uncertainty persists as to their status.

The Joint Filers note that it is well-established that until such time that the Federal Communications Commission (“FCC” or “Commission”) acts on a bidder’s long-form application, a “winning bidder” in the RDOF auction is nothing more than a provisional applicant.¹ Other federal, state and local government funding programs should therefore be aware that until such time as a winning bidder’s long-form application is granted and ETC designation, letters of credit, and bankruptcy code opinion letters are obtained, a winning bidder’s census block groups (“CBGs”) are *not* funded through RDOF. Nonetheless, in attempting to coordinate with the FCC’s efforts, some federal, state, or local agencies may refrain from issuing their own broadband funding awards in areas where it is perceived that some entity “won” in the RDOF auction or where the funding status is uncertain.² Problematically, should the FCC deny a long-

¹ *RDOF Procedures Public Notice* at paras. 135, 287, 319 and n. 424.

² By way of example, the State of Tennessee as part of its [Broadband Accessibility Grant program](#) considers “the likelihood that the proposed area will receive broadband service without state grant funding” and specifically looks to “RDOF eligible areas.” In Washington State, State Broadband Office Director Russ Elliott [indicated](#) that the State is “limited in what it can do to close any service gaps” left by federally funded companies... Once those locations are allocated, no longer can you go chase federal money in those areas.” Similarly, [in Oregon](#), there are “many local utilities locked out of federal [broadband] funding opportunities based on inaccurate data” according to Oregon Business Development Department Telecommunications Strategist Chris Tamarin, adding “[y]ou can see the sense of not wanting to provide duplicate funding for a service area. But here are these unintended consequences.” See “Federal money to SpaceX may hurt public broadband efforts in WA,” *Crosscut* (March 8, 2021) available at <https://crosscut.com/politics/2021/03/federal-money-spacex-may-hurt-public-broadband->

form application in the next 12 months or so, locations in these CBGs are likely to be denied eligibility for critical funding through other federal, state and local broadband funding programs. This outcome unjustly strands the rural residents and businesses in these CBGs without broadband support for an indeterminate period.

While such deference by other jurisdictions is not required given the provisional nature of the RDOF auction results, in an abundance of caution and in order to ensure that rural households, farms, and businesses are not left stranded without broadband services due to RDOF bidders defaulting on locations or not having their long form applications ultimately approved by the FCC, the Joint Filers respectfully request that the Commission expeditiously release a Public Notice that lists CBGs that the Commission knows are in default. The Public Notice should identify by winning bidder those CBGs that were bid for and provisionally won in the auction, but have since been definitively defaulted on by the winning bidder. Defaults or apparent defaults should be listed whether the default occurred due to failure to timely submit necessary information or waiver requests by the long-form application deadlines,³ or by notification of the intent to default provided to the Commission by winning bidders.

Release of this information will enhance the transparency and accountability of the RDOF long-form application process consistent with the request made by 160 members of Congress⁴ and numerous rural broadband industry stakeholders.⁵ Timely, thorough, and transparent review of these applications is increasingly important, as various other federal, state and local funding programs are currently being launched or considered.⁶ Release of this Public Notice also would

[efforts-wa](#). Florida currently is considering a bill that would prohibit state broadband grant funding in a “project area for which any other federal funding has been awarded.” See [CS/HB 753](#).

³ *Rural Digital Opportunity Fund Phase I Auction Scheduled for October 29, 2020, Notice and Filing Requirements and Other Procedures for Auction 904*, Public Notice, 35 FCC Rcd 6077, para. 321 (2020) (“RDOF Procedures Public Notice”).

⁴ Letter from Senators Amy Klobuchar and John Thune and Representatives James E. Clyburn and Tim Walberg *et al.* to Former Chairman Ajit Pai, FCC (January 19, 2021).

⁵ See generally “*The Rural Digital Opportunity Fund: Rural America’s Broadband Hopes at Risk*,” White Paper, NRECA and NRTC (February 1, 2021); *Rural Digital Opportunity Fund, Connect America Fund, Auction 904*, WC Docket No. 19-126, WC Docket No. 10-90, AU Docket No. 20-34, Ex Parte Letter of NTCA—The Rural Broadband Association (February 5, 2021); *Ensuring RDOF Integrity Coalition Informal Request for Commission Action*, WC Docket No. 19-126, WC Docket No. 10-90, AU Docket No. 20-34, (February 25, 2021) (“Informal Request”) and Letter from Caressa D. Bennet to Marlene H. Dortch, WC Docket No. 19-126, WC Docket No. 10-90, AU Docket No. 20-34 (March 5, 2021).

⁶ Such programs include the U.S. Department of Agriculture (“USDA”) Rural Utilities Service (“RUS”) Rural Development Broadband ReConnect Program, RDOF Phase II, new broadband programs created by the coronavirus (COVID-19) stimulus legislation for NTIA and other federal agencies, as well as numerous state funded broadband programs. The new USDA [rules](#) for the next round of RUS ReConnect broadband funding will become effective on April 27, 2021. [NTIA](#) is also expected to issue rules in the coming weeks for its Broadband Infrastructure Program, Tribal Broadband Connectivity Program, and Connecting Minority Communities Program.

further the interagency coordination policy objectives established by Congress requiring the FCC to share information on broadband funding projects with the USDA and other federal agencies.⁷ Because time is of the essence, the known defaulted RDOF locations should be disclosed expeditiously so that they can be applied for by those seeking to serve them through other funding programs. The FCC also should expeditiously release on a rolling basis any new defaults going forward.

While it is again well-established that the initial announcement of auction results is *not* an award of funds by the FCC, the requested Public Notice would help provide certainty and clarity to the status of the auction proceedings for the benefit of all stakeholders – including, most importantly, the consumers in the affected areas. Accordingly, the Joint Filers urge the Commission to issue a Public Notice listing CBGs that are already in default so that it is clear the locations in these CBGs will not receive RDOF funding and will be eligible for other funding programs. Doing so serves the public interest by enhancing transparency and accountability of the RDOF long-form approval process and ensures that rural consumers living in these areas will not be denied other funding from other sources.

Respectfully submitted,

/s/ Caressa D. Bennet

Partner
Womble Bond Dickinson (US) LLP
Counsel to Ensuring RDOF Integrity Coalition

/s/ Aaron Bennett

Vice President
Broadband Development
NRTC

/s/ Brian M. O'Hara

Senior Director
Regulatory Issues – Telecom & Broadband
NRECA

/s/ Michael R. Romano

Senior Vice President
Industry Affairs & Business Development
NTCA–The Rural Broadband Association

/s/ William Esbeck

Executive Director
Wisconsin State Telecommunications Association

⁷ See, e.g., Broadband Interagency Coordination Act provision of *The Consolidated Appropriations Act*, Public Law No.116-260 (2021). Additionally, and pursuant to Section 6212 of the Farm Bill, the FCC, USDA, and U.S. Department of Health and Human Services signed a [Memorandum of Understanding](#) in August 2020 to work together on the Rural Telehealth Initiative, a joint effort to collaborate and share information to resolve service provider challenges and promote broadband services and technology to rural areas in America, among other things.

cc: The Honorable Jessica Rosenworcel
The Honorable Brendan Carr
The Honorable Geoffrey Starks
The Honorable Nathan Simington
Travis Litman
Ramesh Nagarajan
Greg Watson
Austin Bonner
Carolyn Roddy