

**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 THE
NATIONAL ASSOCIATION OF STATE UTILITY
CONSUMER ADVOCATES**

The Federal Communications Commission (FCC or Commission) has proposed establishing a new rural digital opportunity fund (RDOF) that would target \$20.4 billion in federal Universal Service Fund (USF) support over 10 years to high cost areas that lack 25 Megabits per second (Mbps) downstream and 3 Mbps upstream (25/3 Mbps) broadband access services.¹ The proposed RDOF would use a reverse auction to distribute support in two phases. Phase I would distribute \$16.4 billion to unserved areas, largely within price cap carrier service territories. Phase II would distribute roughly \$4 billion in support to underserved areas and unserved areas not funded by Phase I. Industry participants, state commissions, public interest groups, and trade groups filed comments on the August 2, 2019 RDOF Notice of Proposed Rulemaking (NPRM).

¹ *In the Matter of Rural Digital Opportunity Fund et al.*, Notice of Proposed Rulemaking, and Notice of Inquiry, Docket Nos. WC Docket 19-126, (rel. August 2, 2019) (*NPRM*). See, Notice of the *NPRM*, 84 *Fed. Reg.* 43543 (Aug. 21, 2019). Initial comments due September 20, 2019; reply comments are due October 21, 2019.

The National Association of State Utility Consumer Advocates (NASUCA)² applauds the FCC's efforts to continue distributing federal USF support to deploy infrastructure capable of supporting high-speed broadband services in unserved areas. NASUCA members represent both the interests of the consumers who benefit from the availability of affordable voice and broadband internet access services and also the interests of retail consumers of telecommunications services who support the USF through the contributions process. NASUCA has long advocated for the efficient use of the federal USF to support provisioning quality, affordable telecommunications services coupled with a public interest obligation to deploy high-speed broadband networks and services in rural unserved or underserved areas.³

I. EXECUTIVE SUMMARY

In essence, the FCC's NPRM proposes awarding federal USF support through a two-phase federal reverse auction to successful bidders that will deploy facilities supporting voice and high-speed internet service within specified federal performance standards in unserved or

² NASUCA is a voluntary association of 58 consumer advocates. NASUCA members represent the interests of utility consumers in 43 states, the District of Columbia, Puerto Rico, Barbados and Jamaica. NASUCA is incorporated in Florida as a non-profit corporation. NASUCA's full members are designated by the laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the state Attorney General's office). NASUCA's associate and affiliate members also represent the interests of utility consumers but are not created by state law or do not have statewide authority. Some NASUCA member offices advocate in states whose respective state commissions do not have jurisdiction over certain telecommunications issues.

³ See, e.g. NASUCA Resolution 2019-04, *Urging the FCC to Refrain from Adopting a Hard Cap on the Overall Size of the Federal Universal Service Fund and Instead Focus on Universal Service Goals and Contributions Reform*; NASUCA Resolution 2018-01, *Urging the FCC and States to Assure that Lifeline Eligible Households in All Regions of the Nation Have Access to Voice and Broadband Internet Access Services from a Choice of Providers and Networks, Made More Affordable with Lifeline Support*; NASUCA Resolution 2017-05, *Urging State Commissions and the FCC to Adopt Policies and Processes to Provide Lifeline Eligible Households with Access to Affordable Lifeline and Broadband Internet Access Services*; and NASUCA Resolution 2017-04, *Urging Local, State, and Federal Officials to Ensure Reliable Broadband Internet Access Services are Accessible and Affordable to All Consumers*.

partially unserved areas, based upon broadband availability data obtained through federally required reports.

NASUCA agrees with other commenters that the RDOF program should complement (1) the role of states in assuring that consumers have a reliable, affordable source for voice communications, (2) efforts by states to incentivize or support expansion of broadband service in unserved communities, and (3) state Lifeline programs that make broadband service more affordable.

NASUCA opposes requests by price cap carrier interests that the FCC provide regulatory relief to allow price cap carriers to avoid state enforced carrier-of-last resort (COLR) obligations, or the obligation to file a petition for relinquishment of ETC designation. Requests for forbearance from Section 214(a) discontinuance of service requirements have also been raised. These proposals are legally unsound and not in the public interest.

NASUCA concurs with some price cap carriers that consumers who have access to voice and high-speed broadband services due to Connect America Fund II (CAF) support should not lose that access as the CAF II phase is completed and the FCC implements the RDOF. NASUCA urges the FCC to examine these transition issues from the perspective of consumers and communities, including Lifeline eligible consumers, who need continued access to these services. If any additional high cost support is required pursuant to Section 254 – for a seventh year of CAF II funding or otherwise – the FCC should quantify the range of that additional support before finalizing RDOF. Otherwise, the FCC will be deciding the framework and cost of the RDOF project based upon an incomplete record.

II. REPLY COMMENTS

A. Overview

NASUCA's Reply Comments focus on, first, the importance of federal and state cooperation, second, the need to respect the role of states in the ETC process set up by Section 214(e) and state imposed carrier-of-last-resort obligations; and third, continuity of service issues in the transition from CAF II to RDOF Phase I.

The NPRM provides that the RDOF Phase I would fund build-out of high-speed broadband networks with minimum speeds of 25 Mbps down and 3 Mbps up, to unserved locations in price cap carrier service areas. The total proposed RDOF budget of \$20.4 billion is significantly larger than the Connect America Fund Phase II (CAF II) budget of \$2.14 billion. Winning bidders would be required to provide voice and high-speed broadband services on a phased-in basis over 10 years.

NASUCA joins other parties who recommend that the Commission adjust the RDOF framework (minimum speeds, performance tiers, weighting) to encourage construction of "future proof" broadband networks to meet the public's needs 10 years from implementation (the end of RDOF Phase II). NASUCA also agrees with other parties that the FCC should assure the RDOF budget of \$20.4 billion is properly sized and efficiently spent by using the best available mapping information to identify what locations are unserved.⁴ Further, the FCC should assure affordable access to the high-speed broadband services made possible through the RDOF support.⁵

⁴ See, *In the Matter of Universal Service Contributions Mechanism*, WC Docket No. 06-122, NASUCA Comments at 7-8 (July 29, 2019) (NASUCA July 2019 Contributions Comments).

⁵ See, California Emerging Technology Fund Comments at 12; California PUC Comments at 4-5.

B. The FCC Should Design the RDOF Program to Complement State Authority and Initiatives

NASUCA encourages the FCC to design and implement the RDOF in a way that complements and coordinates with state commission and other state efforts to assure that state residents, businesses, and communities have access to reliable, affordable voice telecommunications service and high-speed broadband services.

The California Public Utility Commission (CPUC) asks the FCC to allow California and other interested states the option of a federal-state partnership to combine RDOF support with state-supplied support, modelled on the FCC's waiver grant to New York as part of the CAF II proceeding.⁶ Winning bidders would still have to meet the FCC's RDOF eligibility requirements, including technical and financial qualifications. But the addition of state funding could lead to more funded locations, higher delivered speed tiers, and other potential public benefits. NASUCA supports CPUC's proposal that the FCC design the RDOF to encourage federal-state cooperation.

The Nebraska Public Service Commission's (NPSC) state-level universal service fund is another example of potential federal/state cooperation. The NPSC universal service program has "dedicated explicit capital expense (CapEx) broadband build-out support" in certain Nebraska census blocks that were not included in the CAF II offer of support or otherwise part of the price cap carrier's build out plans.⁷ Most, if not all, of the Nebraska supported projects are designed to bring broadband speeds at minimum speeds of 25/3 Mbps.⁸ Nebraska's state universal service

⁶ CPUC Comments at 5-7.

⁷ NSCP Comments at 1-2.

⁸ *Id.* at 2, fn. 4.

fund also provides additional Lifeline support and support for telehealth projects, among other purposes.⁹

Other states have broadband infrastructure support policies and programs.¹⁰ Those programs present further possibilities of coordination with RDOF.

As the FCC designs and implements the RDOF, the FCC should respect state efforts to assure that their residents, businesses, and communities have access to both reliable voice and high-speed broadband services. The FCC should design the RDOF program to complement and encourage these state policies and initiatives.

C. The FCC Should Not Grant Certain Requests for Regulatory Relief

NASUCA opposes the requests by some parties that the FCC: 1) eliminate some price cap carriers' ETC obligations;¹¹ 2) preempt or otherwise overrule state imposed COLR obligations;¹² and/or 3) preempt or lighten the Section 214 discontinuance of service notice and filing requirements for some price cap carriers.¹³ Price cap carriers have made these requests in anticipation that they may not bid or may not win a bid for RDOF support to bring high-speed broadband services (minimum of 25/3, per the NPRM) to some unserved locations in their service territory.

In this scenario, both the price cap carrier and the winning bidder would hold ETC designation. The winning bidder's ETC designation may be limited to only the area covered by the RDOF winning bid and so would be a subset of the price cap carrier's ETC service area.

⁹ *Id.* at 2, fn. 2.

¹⁰ See, generally, Lichtenberg, *State Universal Service Funds 2018: Updating the Numbers*, (Apr. 2019, NRRI). Available at: <https://pubs.naruc.org/pub/FA86A8F7-0CE5-DF43-391B-095BD03757BF>.

¹¹ See, e.g., Windstream Services, LLC Comments at 25-26

¹² Windstream at 26; Frontier Communications Corp. Comments at 19-22.

¹³ Frontier at 20; Windstream at 25; USTelecom – the Broadband Association Comments at 29.

NASUCA opposes the price cap carriers' request for FCC intervention. The mere fact that a second carrier holds an ETC designation does not justify release of the price cap carrier from its ETC obligations. Section 214(e) expressly permits the designation of more than one ETC in overlapping areas.¹⁴ If the state commission designated the price cap carrier as an ETC, then Section 214(e)(4) directs the price cap carrier to request permission from the state commission – not the FCC – to relinquish the ETC designation.¹⁵ Further, Section 214(e)(4) authorizes the state commission to rule upon whether and under what conditions an ETC may relinquish its ETC designation, “to ensure that all customers served by the relinquishing carrier will continue to be served”¹⁶

Frontier and other price cap carrier ILECs ask the FCC to preempt state-imposed COLR obligations as unnecessary if another ETC has an obligation to provide voice services.¹⁷ NASUCA urges the FCC to deny such requests for regulatory relief as unnecessary and contrary to the public interest.¹⁸ As discussed above, many states have their own initiatives to assure that their residents, businesses, and communities have access to affordable, reliable voice service and potentially high-speed broadband service through state universal service programs and other initiatives. If a price cap carrier ILEC wants relief from state imposed COLR obligations, the request should be made to the state commission. The mere award by the FCC of RDOF Phase I support to an ETC to provide competing voice service (and new high-speed broadband service) in a portion of the ILEC's service territory does not justify preemption of a state commission's authority over LECs and intrastate telecommunications.¹⁹

¹⁴ 47 U.S.C. § 214(e)(1), (2), (5), (6).

¹⁵ 47 U.S.C. § 214(e)(4).

¹⁶ 47 U.S.C. § 214(e)(4).

¹⁷ Frontier at 19-22; Windstream at 26.

¹⁸ See, NPSC at 3 (Preserve state level requirements tied to state regulation and state support).

¹⁹ See, 47 U.S.C. § 152(b).

The price cap carriers also request forbearance from or some lighter obligation to discontinue interstate telecommunications services pursuant to Section 214(a).²⁰ NASUCA notes that in November 2017 and June 2018 the Commission modified and streamlined its regulations that govern discontinuance of service.²¹ These commenters, who oppose the Section 214(a) discontinuance process in principle, have not identified which of the FCC's already streamlined regulatory procedures for discontinuance of interstate services are burdensome. The request for forbearance or other relief has not been supported. The public and state commissions should still receive notice and an opportunity to be heard concerning any price cap carrier's proposed discontinuance of interstate voice or high-speed broadband services, pursuant to Section 214(a) and associated regulations.

D. The FCC Should Provide Guidance Affirming the Service Obligations of ETCs during the CAF II to RDOF Transition Periods and Quantify the Cost of Additional High Cost Support, If Any

Price cap carriers and other commenters identify several concerns related to the transition from CAF II support to the award of RDOF Phase I support and the winning bidder's provision of voice and broadband services on a phased in basis. For an area that received CAF II support and is classified under RDOF Phase I as ineligible, the ETC serving that area will receive no additional high cost support at the end of the CAF II. For an area that received CAF II support and is classified under RDOF Phase I as unserved (lacking broadband with minimum 25/3 Mbps speeds), there are 3 possible outcomes. First, the CAF II recipient may win the bid for RDOF support for the same area. Second, RDOF support could be awarded to a different ETC provider.

²⁰ USTelecom at 29; Frontier at 19-20; Windstream at 25. See, 47 U.S.C. § 214(a).

²¹ *In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, First Report and Order, Declaring Ruling and Further Notice of Proposed Rulemaking (Nov. 29, 2017); Second Report and Order (June 8, 2018).

Third, there could be no winning bid to provide RDOF level voice and high-speed broadband services for that area.

As NPSC notes, the variety of possible outcomes raises the question of what are the ongoing universal service obligations of the ETC that received CAF II support to bring voice and high speed broadband services meeting CAF II minimum standards (10/1 Mbps).²² Second, commenters question whether the universal service support principles of Section 254 require the FCC to authorize some high cost support to preserve voice and high-speed broadband availability at the end of CAF II levels?

NASUCA does not agree with USTelecom that the end of CAF II high cost support funding automatically relieves the price cap carrier (or other ETC with CAF II support) of the obligation to continue to provide voice and broadband services in those CAF II funded areas.²³ Nor should the award of RDOF support to another ETC within the same area command such a result.²⁴ For example, even when the CAF II funding ends the ETC is still eligible for reimbursement for Lifeline support. As discussed above, only after approval of a proper Section 214(e)(4) petition for relinquishment of ETC designation can an ETC's universal service obligations end.

However, the framework for ETC designation and relinquishment is not the only consideration. Section 254(b)(5) calls for universal service support to be specific, predictable and sufficient.²⁵ Commenters ask the FCC to approve a seventh year or more of CAF II support.²⁶ Frontier proposes that the FCC continue providing high cost support to the ETC that

²² See, NPSC at 5-7.

²³ See, e.g. USTelecom at 28-29.

²⁴ Frontier states that the *award* of RDOF support to another ETC should trigger the price cap carrier's ability to discontinue all services. Frontier at 19-20.

²⁵ 47 U.S.C. § 254(b).

²⁶ See, e.g., CenturyLink Comments at 2, 5-8; Windstream at 22-24.

received CAF II support and service obligations, but is not the winner of RDOF support.

Frontier suggests that continued high cost support could be phased out as the new ETC meets the RDOF milestones for voice and broadband service availability.²⁷

NASUCA urges the Commission to consider these transition issues from the perspective of the consumers and businesses,²⁸ including low-income households that need Lifeline support for affordable voice and broadband service. A carrier that received CAF II support and is then allowed to relinquish its ETC obligations might make the business decision to continue offering voice and broadband services and maintain the network in that area. But low-income households eligible for Lifeline would have to pay the full retail rate for service from a carrier that is not an ETC. A carrier that received CAF II support and will not receive RDOF support may be disinclined to maintain the network supporting voice and broadband services at CAF II levels. NASUCA is concerned that the gains achieved due to CAF II funding should not diminish.

The FCC should confirm that recipients of CAF II support have an ongoing obligation to provide voice and broadband services, unless and until the ETC is permitted to relinquish service. The FCC should consider whether additional high cost support is necessary pursuant to Section 254(b) to preserve for consumers and businesses continued access to the services made possible by CAF II funding.²⁹ If the FCC determines that some continued high cost support is appropriate to assure the continued availability of voice and high-speed broadband services at the CAF II level, then the FCC must identify the minimum amount of high cost support to provide

²⁷ Frontier at 16-18.

²⁸ Both Windstream and Frontier recognize that the Commission must consider the interests of consumers during these transitions. Windstream at 22-24. See, Frontier at 14-16. (“The NPRM poses questions regarding the termination of prior support mechanisms ahead of the RDOF, but it does so without considering the impact on consumers.... In considering how to transition from prior support mechanisms to the RDOF, the Commission’s focus should be squarely on ensuring that all consumers retain their voice and broadband service during the transition.”).

²⁹ 47 U.S.C. § 254(b).

during these transition periods. NASUCA recommends that the amount be lower than a full year of CAF II support for an area, on the assumption that the high cost support does not carry any new obligations to improve the voice and broadband service performance qualities or availability.

NASUCA encourages the FCC to take prompt action to address these transitions concerns and quantify, on both a per area and total budget basis, the possible amount of additional high cost support. First, this information may influence the bidding decisions of existing CAF II support recipients. Second, this information is necessary for the public to understand the full, combined cost of the RDOF and provision of any additional high cost support for a transitional period. The proposed total RDOF budget of \$20.4 billion is ambitiously high on its own. An estimate of the amount of continued, concurrent high cost support that the Commission concludes would be necessary to provide sufficient support during the different transitions should also be part of the record.³⁰

III. CONCLUSION

NASUCA supports the FCC's proposal to make a new round of high cost federal universal service funding available through the proposed Rural Digital Opportunity Fund program. NASUCA encourages the FCC to adopt NASUCA's general recommendations concerning the appropriate broadband service performance goals and use of the best mapping and location data available to identify unserved and underserved areas. Further, NASUCA recommends that the RDOF be designed and implemented to complement and coordinate with

³⁰ The total cost of continued high cost support and new RDOF support will likely impact the contributions factor. NASUCA has encouraged the Commission to undertake contributions reform. See, NASUCA July 2019 Contributions Comments at 1-8.

individual state initiatives. The FCC should decline to grant certain regulatory relief requested by some price cap carriers. The FCC should provide clear guidance as to the on-going obligations of CAF II recipients to continue to provide supported voice and broadband services. The question of transitional high cost support should be resolved by the FCC and if necessary, the amount of support should be quantified.

Respectfully submitted,

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