

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
Rural Digital Opportunity Fund)	WC Docket No. 19-126
)	
Rural Digital Opportunity Fund (Auction 904))	AU Docket No. 20-34
)	

**COMMENTS OF
NTCA–THE RURAL BROADBAND ASSOCIATION**

NTCA–The Rural Broadband Association (“NTCA”) hereby files these Comments in response to the Public Notice released March 5, 2024 in the above-captioned proceedings¹ seeking input on a letter filed by several dozen stakeholders proposing “amnesty” for providers from penalties for failures to serve customers as committed by these providers in the Connect America Fund (“CAF”) Phase II and Rural Digital Opportunity Fund (“RDOF”) auctions.²

NTCA previously submitted an initial response to the *Stakeholder Amnesty Letter* and incorporates by reference its arguments therein,³ including most notably the points that:

¹ *Connect America Fund, et al.*, WC Docket Nos. 10-90, *et al.*, Public Notice (rel. Mar. 5, 2024).

² *Ex Parte* Letter from Clay Stribling, President & CEO, Amarillo Area Foundation, *et al.*, to Chairwoman Jessica Rosenworcel, AU Docket No. 20-34, *et al.* (filed Feb. 28, 2024) (“*Stakeholder Amnesty Letter*”).

³ *Ex Parte* Letter from Michael R. Romano, Executive Vice President, NTCA, to Marlene H. Dortch, Secretary, Federal Communications Commission, AU Docket No. 20-34, *et al.* (filed Mar. 8, 2024) (“*NTCA Letter*”).

- (1) consequence-free amnesty would:
- (a) harm, rather than help, consumers;
 - (b) result in an inefficient allocation of valuable resources in support of broadband availability;
 - (c) undermine the work of grant programs overseen federal and state agencies, and
 - (d) call into question the integrity of the universal service fund (“USF”) programs overseen by the Federal Communications Commission (the “Commission”); and
- (2) any relief from meeting the obligations made in the CAF Phase II and RDOF auctions should be granted only if:
- (a) parties seeking such relief pay a penalty for the early release from the lingering overhang of default that might preclude participation in other grant programs;
 - (b) those seeking such relief commit not to seek other broadband funding to serve the locations they have abandoned; and
 - (c) all stakeholders – including but not limited to the states and territories that would be left to tackle serving the abandoned locations through upcoming grant programs – must have the ability to comment and reply on any request for relief in a public and transparent process that can highlight the implications of amnesty for abandonment.

In these comments, NTCA expands upon several of these points highlighted in its prior letter. In particular, the significance of a transparent and measured process for public notice and comment on any such request for relief cannot be overstated. There is very real risk that, if relief is available and if the consequences of abandonment are non-existent or limited, parties will seek to surrender only the most expensive portions of the areas they committed to serve in the CAF Phase II and RDOF auctions – leaving the states, territories, and other federal agencies with an even higher hill to climb in achieving “Internet for All” through the Broadband Equity, Access, and Deployment (“BEAD”) program and other grant initiatives. Any provider seeking such relief should be required to identify in its petition for relief not only a list of the census block groups and

locations (by Fabric identifier) that it proposes to abandon, but also the reserve price for those areas *and* the other areas it would retain subject to its CAF Phase II and RDOF commitments. This will enable the Commission and all stakeholders to ascertain more easily the extent to which the provider is seeking to cast aside only the most expensive-to-serve locations and “cream-skim” its auction wins, and such information is especially critical for states and territories to evaluate the extent to which the request would complicate or even thwart their ongoing efforts to implement the BEAD program’s directive to connect all unserved locations. By contrast, grants of blanket amnesty under a pre-defined set of limited conditions with little to no public input on the individual circumstances of each would defy, rather than serve, the public interest.

Another point raised in the *NTCA Letter* and worthy of further elaboration is the penalty that parties should pay in exchange for the ability to abandon locations that were won in the CAF Phase II and RDOF auctions during any special “amnesty” window. Parties seeking such relief would presumably receive at least three benefits if it is granted: (1) release from the duty to deploy a network to and to serve the locations in question; (2) release of the burden of the associated letter of credit obligations (*i.e.*, a reduction in the letter of credit that must be maintained with respect to those abandoned locations); and (3) the ability to participate in BEAD and other subsequent grant initiatives with a “clean bill of health” that absolves the provider despite having failed to meet all of its commitments in the relevant auction. These benefits should not be conferred for free, particularly given that the proposed abandonment of these customers comes *after* these providers continued to pursue and ultimately received their long-form authorization.

To address such concerns, the *NTCA Letter* suggested that the Commission should condition any grant of “amnesty” upon an “early buyout” of the associated liability. On its face, abandonment of locations would be tantamount to failure to satisfy final deployment obligations;

under the rules adopted in the *RDOF Order*, the liability for such non-compliance can be as high as 1.75 times the average amount of support per location received in that state over the support term, as well as potentially 10% of the RDOF support authorized over the 10-year support term for that state.⁴ If the Commission does not believe that the full extent of this liability is warranted under circumstances where a party is seeking to return locations prior to the end of the USF support term so that those locations can be eligible for service via another program, it should at a minimum consider a modified version of these penalties that would maintain the integrity of the USF programs and deter parties from returning their hardest-to-serve locations and foisting the duty to serve them upon the BEAD program. For example, to strike a balance, the Commission could apply just the per-location penalty under the RDOF rules (with a minimum multiplier of 1.25 so that the penalty is not merely a “no-harm, do-over” refund by the provider of the amount of USF support previously received for each abandoned location), but without the additional 10% penalty. The Commission should also ensure that the per-location penalty is calculated considering the relative costs of the locations being returned (as determined by the model used to set reserve prices in the first instance), so that parties do not realize the benefits of “averaging” in turning back only the highest-cost, hardest-to-serve portions of auction areas won while retaining a portion of the support associated with those locations going forward.

Finally, NTCA reiterates the importance of precluding a party that abandons locations secured in the CAF Phase II or RDOF auctions from applying subsequently for funding to serve those same locations through BEAD or other grant programs. These parties bid for, won, and

⁴ See, e.g., *Rural Digital Opportunity Fund, et al.*, WC Docket No. 19-126, *et al.*, Report and Order, 35 FCC Rcd 686, 713-716 (2020) (“*RDOF Order*”), at ¶¶ 58-64; see also 47 C.F.R. § 54.806(c). The precise calculation of course depends upon the extent of non-compliance and also adjustments to required location counts.

committed to serve these specific unserved areas, often at the expense of other providers who also sought to do so and presumably would have lived up to those obligations in lieu of seeking escape from them. To reward the winning bidders now by permitting them to “hop” from one program to another in pursuit of better economics for self-selected locations would undermine the integrity of the Commission’s auction programs and establish poor precedent for future initiatives. The Commission should frown upon such patent gaming and therefore condition upon any waiver that permits abandonment of these locations for purposes of the CAF Phase II and RDOF auction programs upon an agreement by the recipient of such “amnesty” to forgo pursuit of any additional broadband-related funding to serve those same locations.

Respectfully submitted,



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