

Before the
Federal Communications Commission
Washington, D.C. 20554

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

ORDER

Adopted: October 8, 2020

Released: October 8, 2020

By the Chief, Wireline Competition Bureau and the Chief, Office of Economics and Analytics:

I. INTRODUCTION

1. On July 27, 2020, Western Iowa Wireless, Inc. (WIAW) filed a petition for reconsideration¹ of the Bureau’s denial of its challenge to the eligibility for the Rural Digital Opportunity Fund Phase I auction (“Auction 904”) of certain Iowa and Nebraska census blocks that WIAW alleges it serves.² In this order, the Wireline Competition Bureau (Bureau) and the Office of Economics and Analytics (Office), in conjunction with the Rural Broadband Auctions Task Force, deny the petition for reconsideration for the reasons set forth below.

II. BACKGROUND

2. On January 30, 2020, the Commission adopted the framework for the Rural Digital Opportunity Fund, an unprecedented effort to close the digital divide by providing up to \$20.4 billion to connect millions of unserved rural homes and small businesses to high-speed broadband networks.³ The Commission will award this funding through a multi-round, reverse, descending clock auction that favors faster services with lower latency and encourages intermodal competition. In order to bring service to consumers in areas that completely lack robust broadband, as well as to those living in areas partially served, the Commission will assign funding in two phases: Phase I targets those areas that current data confirm are wholly unserved by 25/3 Mbps broadband; Phase II will target unserved locations within

¹ Petition for Reconsideration of Western Iowa Wireless, Inc., AU Docket No. 20-34, WC Docket No. 19-126, WC Docket No. 10-90 (filed July 27, 2020) (Petition). Although petitioner filed the petition pursuant to 47 CFR §1.429(b), which governs reconsideration of final Commission actions in notice and comment rulemaking proceedings, we consider it as a petition under 47 CFR §1.106, which governs reconsideration of Commission action in non-notice and comment rulemaking proceedings, because the individual challenge determinations are more akin to adjudications than rulemaking orders.

² Wireline Competition Bureau and Office of Economics and Analytics Release Updated List and Map of Eligible Areas for the Rural Digital Opportunity Fund Phase I Auction, Public Notice, 35 FCC Rcd 6499, 6500 (Jun. 25, 2020) (Updated Eligible Areas Public Notice).

³ Rural Digital Opportunity Fund, WC Docket No. 19-126, Report and Order, FCC 20-5, 35 FCC Rcd 686, 689-90, para. 8 (2020) (Rural Digital Opportunity Fund Report and Order); see also Rural Digital Opportunity Fund, WC Docket No. 19-126, Order on Reconsideration, FCC 20-127 (Sept. 16, 2020).

areas that data demonstrate are only partially served, as well as any areas not served through Phase I.⁴ Of the total allocation, \$16 billion will be available in Phase I through Auction 904.⁵

3. For Rural Digital Opportunity Fund Phase I, the Commission directed the Bureau to compile a preliminary list of eligible areas using a specified methodology.⁶ In relevant part, that methodology called for the Bureau to exclude otherwise potentially eligible census blocks if the most recent publicly available Form 477 data show that they are served with voice and 25/3 broadband service by a terrestrial provider.⁷ Form 477 collects information about broadband connections to end-user locations, wired and wireless local telephone services, and interconnected Voice over Internet Protocol (VoIP) services.⁸ Semiannually, each facilities-based provider of fixed services is required to submit and certify data on all census blocks in which it makes broadband connections available to end-user premises, as well as data by census tract on fixed broadband and voice service subscriptions.⁹ Data become publicly available several months after submission.¹⁰ March submissions reflect data as of the previous December, and September submissions reflect data as of the previous June.

4. The Commission further directed the Bureau to conduct a limited challenge process that provided an opportunity for service providers to identify recently served areas that were not reflected in the most recent publicly available Form 477 data.¹¹ It explained:

Because there is an inevitable lag between the time when areas are served and the time that service is reflected in publicly available FCC Form 477 data, parties will be given an opportunity to identify areas that have subsequently become served, and the Bureau will have the opportunity to compare the preliminary list of eligible areas with the final list to identify any obvious reporting errors. . . . [G]ood policy requires us to avoid making limited federal funding available in areas where broadband providers already are receiving support to deploy 25/3 Mbps broadband service.¹²

The Commission further directed that if more recent FCC Form 477 data are publicly available when the Commission adopts the specific procedures for Auction 904, the Bureau should use the more recent data and publish a final list.¹³

5. The Commission also stated its intention to exclude from Auction 904 “those census blocks which have been identified as having been awarded funding through the U.S. Department of Agriculture’s ReConnect Program, or awarded funding through other similar federal or state broadband subsidy

⁴ *Rural Digital Opportunity Fund Report and Order*, 35 FCC Rcd at 688, para. 5.

⁵ *Id.* at 689-90, para. 8.

⁶ *Id.* at 691, para. 12.

⁷ *Id.* at 692, para. 13.

⁸ See generally *Modernizing the FCC Form 477 Data Program*, WC Docket No. 11-10, Report and Order, 28 FCC Rcd 9887 (2013); and *Establishing the Digital Opportunity Data Collection and Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195 and 11-10, Report and Order and Second Further Notice of Proposed Rulemaking, 34 FCC Rcd 7505 (2019).

⁹ FCC Form 477 Instructions at 32 (May 21, 2020), <https://us-fcc.app.box.com/v/Form477Instructions>.

¹⁰ For example, the June 2019 Form 477 data, due September 1, 2019, were released in March 2020. The initial list of eligible areas was based on the most recent publicly available data.

¹¹ *Rural Digital Opportunity Fund Report and Order*, 35 FCC Rcd at 693, para. 14.

¹² *Id.*

¹³ *Id.*

programs to provide 25/3 Mbps or better service.”¹⁴ To that end, the Commission directed the Bureau “to provide an opportunity to identify census blocks that have been awarded support by a federal or state broadband subsidy program to provide 25/3 Mbps or better service.”¹⁵

6. On March 17, 2020, the Bureau, in coordination with the Office and the Rural Broadband Auctions Task Force, released a Public Notice with the preliminary list of census blocks and a map of areas that were deemed initially eligible for Rural Digital Opportunity Fund Auction 904.¹⁶ The list was based on Form 477 data as of June 30, 2019, because the data as of December 31, 2019, which had been submitted by providers by March 1, 2020, were not yet publicly available.¹⁷ WIAW’s deployment was not included in this preliminary list of eligible areas because it did not have any June 2019 Form 477 voice data in submitted status when the preliminary eligible areas list was generated.¹⁸

7. As directed by the Commission, the Bureau also announced a limited challenge process that gave parties an opportunity to identify by April 10, 2020 census blocks that fall into any of three specific categories that would render them ineligible.¹⁹ Two of the categories, relevant to WIAW’s petition, were:

FCC Form 477 Filers. Current Form 477 filers were asked to identify as ineligible any census blocks that had become served with voice and 25/3 Mbps or better broadband services since June 30, 2019, in order to address the lag between the time when areas became served and the time that service is reflected in publicly available Form 477 data. Parties filing comments in WC Docket No. 19-126 regarding this updated Form 477 data were to provide the FCC Registration Number (FRN) used to make the updated Form 477 filing, the “as of date” of the updated data, and the specific census blocks that had changed since the filing of June 2019 data.²⁰

Subsidized Census Blocks. Parties were invited to identify specific census blocks that had been awarded funding by a federal or state broadband subsidy. Parties were to identify only census blocks where a provider had an enforceable commitment to offer broadband service at 25/3 Mbps or better and for which funding had already been paid or a formal commitment has been executed.²¹

8. On April 9, 2020 in response to the *Preliminary Eligible Areas Public Notice*, WIAW filed a challenge indicating that it offered fixed voice and broadband Internet access service in some of the areas

¹⁴ *Id.* at 692, para. 13.

¹⁵ *Id.* at 693, para. 14.

¹⁶ *Wireline Competition Bureau Releases Preliminary List and Map of Eligible Areas for the Rural Digital Opportunity Fund Phase I Auction*, Public Notice, 35 FCC Rcd 2685 (WCB 2020) (*Preliminary Eligible Areas Public Notice*).

¹⁷ *Id.* at 2685, n.1.

¹⁸ Despite being in operation since 2008, Petition at 2, WIAW had only filed data three times before: for data as of June 30, 2012, December 31, 2012, and June 30, 2019, and none of those filings indicated WIAW provided voice service as of release of the *Preliminary Eligible Areas Public Notice*. Assuming WIAW was in operation before December 31, 2008, they failed to file 20 of the 23 required Forms 477 by March 1, 2020.

¹⁹ *Id.* at 2685-86.

²⁰ *Id.* Form 477 filers must certify that to the best of their knowledge, information and belief, all data contained in the filing are true and correct. Only after certification can and does the Commission rely on the data.

²¹ *Id.*

designated as preliminarily eligible for Auction 904.²² In its challenge letter to the Commission, WIAW stated that it had “attached our Form 477 data to this filing.”²³ As of the date of the challenge submission, however, WIAW had not submitted and certified its most recently due Form 477 filing reflecting deployments as of December 31, 2019. As indicated in the Form 477 filing instructions in the section on “Certification of Filing Accuracy,” each Form 477 submission must include a certification from an official that the information in the filing is true and correct “to the best of his/her knowledge, information and belief.”²⁴ The instructions to Form 477 make clear the need for such certification, the method for executing it, and the penalties for making willful false statements in a Form 477 filing.²⁵

9. With further assistance from staff, on June 16, 2020, WIAW created its Form 477 filing for December 2019, which had been due by March 2, 2020, and ultimately submitted the filing on July 27, 2020.²⁶ It was not until July 13, 2020 that WIAW filed Form 477s for December 2017, June 2018, and December 2018.²⁷ With staff assistance and after a series of revisions, WIAW also submitted its June 2019 Form 477, which had been due by September 3, 2019, on July 27, 2020.²⁸

10. Meanwhile, on June 25, 2020, the Bureau and the Office, in coordination with the Rural Broadband Auctions Task Force, released an updated list of census blocks and an updated map of areas that were eligible for support in Auction 904.²⁹ The majority of Form 477 challenges were submitted by filers identifying census blocks that had become served with voice and 25/3 Mbps or better broadband service since June 30, 2019. These challenges were generally accepted, with limited exceptions, and were

²² Letter from Chris Corrin, President, WIAW, WC Docket No. 19-126 (filed Apr. 9, 2020). In its letter, petitioner did not indicate when it had begun offering service to the areas in which it claimed to offer voice and broadband services. In its petition, WIAW clarified that its challenge was only to the 1,933 blocks that it claimed to have served as of June 2019. Petition at 3 (“On April 9, 2020, in response to the Bureau’s Public Notice, WIAW filed a challenge indicating that it offered fixed voice and broadband Internet access service in the census blocks shown in its June 2019 Form 477 report.”).

²³ Letter from Chris Corrin, President, WIAW, WC Docket No. 19-126 (filed Apr. 9, 2020).

²⁴ FCC Form 477 Instructions at 32 (Dec. 5, 2016), <https://us-fcc.app.box.com/v/Form477InstThruJune19> (providing instructions for filings through June 2019); *see also* FCC Form 477 Instructions at 32 (May 21, 2020), <https://us-fcc.app.box.com/v/Form477Instructions> (requiring the same certification and providing instructions for filings as of December 2019 and beyond).

²⁵ FCC Form 477 Instructions at 32; *see also* 47 U.S.C § 220(e).

²⁶ In contrast, the petition states that WIAW’s challenge was based on data shown in its June 2019 Form 477 and cites the challenge letter. Petition at 3, n.9. The petition also states, “[o]n June 16, 2020 . . . WIAW also filed updated its (sic) Form 477 filings,” suggesting it had previously filed its Form 477s. Petition at 3. While acknowledging that multiple efforts were made to correct the June and December 2019 filings, the petition states the “updates were filed some nine days before the Bureau released” the *Updated Eligible Areas Public Notice*. Petition at 6. These statements are inaccurate given the timing of the filings. We remind petitioner that, under 47 CFR § 1.17, it is subject to a duty of candor in all submissions to the Commission.

²⁷ *Id.* at 3, n.10. Petitioner characterizes these filings as supplements to the June 2019 and December 2019 data, when in fact, for the December 2019 data, it was an initial filing of overdue data.

²⁸ The June 2019 Form 477 filing for WIAW was created on September 16, 2019 and remained in “Original-In Progress” status until the filing was submitted on February 14, 2020. On that date, WIAW’s June 2019 Form 477 filing was officially submitted; however, later that same day, Mr. Corrin reopened the filing, submitted it, reopened it again, and finally submitted it a third time. On April 8, 2020, Mr. Corrin reopened and resubmitted the filing again, adding voice subscribers for the first time. Finally, on July 27, 2020, Mr. Corrin reopened and resubmitted the filing yet again. When a filing’s status of “Revised-In Progress” has not been addressed and the filing has not been certified as to its completeness and accuracy, the Commission cannot consider the data reliable or usable.

²⁹ *Updated Eligible Areas Public Notice*, 35 FCC Rcd at 6500.

reflected in the updated eligible areas list. Commission staff verified that the census blocks each challenger identified as served as of December 31, 2019 were included in the challenger's most recent Form 477 filing—which was on file with the Commission but not yet publicly available—and confirmed that each provider reported voice subscribers for that state. Accordingly, these blocks were removed from the eligible areas list. Census blocks identified as served after December 31, 2019, and thus not reflected in the most recent filing, were generally accepted as served if the challenger reported voice subscriptions in the state in the December 2019 filing.³⁰

11. The Bureau also rejected some challenges on various grounds, as reflected in an appendix to the *Updated Eligible Areas Public Notice*. WIAW's challenge of 759 census blocks was among those rejected.³¹

12. On July 27, 2020, WIAW filed its petition for reconsideration of the Bureau's denial of its challenge to the eligibility for Auction 904 of certain Iowa and Nebraska census blocks that WIAW serves. WIAW makes two arguments. First, WIAW argues that certain census blocks should be ineligible because it serves those areas with the requisite fixed voice and broadband service, as evidenced by its revisions to its June 2019 Form 477 data.³² Second, WIAW argues that it received a grant under the Empower Rural Iowa Broadband Grant Program that will require the requisite broadband service throughout 4,528 census blocks in Iowa, including those covered by its initial challenge, and thus its entire service area should be ineligible.³³

III. DISCUSSION

13. We deny WIAW's petition for reconsideration both as to its Form 477 filer challenge and its subsidy challenge. WIAW was not a current 477 filer and its challenge could not be verified. WIAW missed the deadline for submitting a subsidy challenge. WIAW's petition presents neither new arguments nor new facts warranting reconsideration that would result in additional areas being excluded from the Rural Digital Opportunity Fund Phase I auction.

14. *Form 477 Filer Challenge*. The challenge process allowed current Form 477 filers to identify as ineligible any census blocks that have become served with voice and 25/3 Mbps or better broadband service since June 30, 2019.³⁴ Noting a continuing obligation to file Form 477 and correct filings, it also outlined the data required for such a challenge.³⁵ Parties filing Form 477 deployment challenges were also requested to provide the FRNs used to make the updated Form 477 filing, the "as of date" of the updated data, and the specific census blocks that had changed since the filing of June 2019 data.³⁶

³⁰ *Id.* at 6500.

³¹ See *Updated Eligible Areas Public Notice* at 6505-10. The Commission only considered challenges to the 759 blocks (out of 1,933 total challenged blocks) that were initially eligible, because the Commission accepted Form 477 challenges only for blocks that were initially eligible. In its challenge, WIAW asserted that it had deployed \geq 25/3 Mbps broadband service by December 31, 2019 for each of these 759 initially eligible blocks. The 1,174 blocks that were part of WIAW's original challenge but not considered were blocks that were initially ineligible for support in Auction 904. Since WIAW was asserting those blocks were ineligible as part of a Form 477 challenge, and such challenges were only permitted for initially eligible blocks, the Commission rejected these 1,174 blocks as beyond the scope of the challenge.

³² See Petition at 5-8.

³³ *Id.* at 8-10.

³⁴ *Preliminary Eligible Areas Public Notice*, 35 FCC Rcd at 2685-86.

³⁵ *Id.* at 2685.

³⁶ *Id.* at 2685, n.2.

15. WIAW's challenge was properly rejected. WIAW filed a challenge on April 9, 2020, attempting to identify 1,933 census blocks that it claimed should be ineligible because it allegedly offered fixed voice and broadband service with speeds of 25/3 Mbps or greater in those areas as of June 2019.³⁷ WIAW thus sought to use the challenge process to file missing June 2019 data, despite the challenge process being an opportunity for "[c]urrent Form 477 filers" to update the Commission with deployment that had occurred since June 2019.³⁸ When WIAW filed its challenge, WIAW was not a current Form 477 filer because it had no recently certified December 2019 Form 477 on file.

16. Moreover, the data attached to WIAW's filing could not be compared to a certified Form 477 filing because WIAW did not have certified December 2019 data on file as of the date of its challenge. As explained in the *Updated Eligible Areas Public Notice*, Commission staff verified that the census blocks that Form 477 filers identified as served prior to 2020 were included in a challenger's December 2019 Form 477 fixed broadband deployment filing and confirmed that each provider reported voice subscribers for that state.³⁹ When staff attempted to verify WIAW's challenge filing data with its December 2019 Form 477 data, it found that WIAW had not filed the required Form 477 data and accordingly, WIAW's challenge could not be verified.⁴⁰

17. Staff found no certified December 2019 Form 477 data filed with WIAW's challenge. Moreover, staff found only one recent complete and certified filing from WIAW in its Form 477 database—the June 2019 filing that had been "in progress." Separate from this challenge process, WIAW has an ongoing obligation to file timely Form 477 data on a biannual basis and make corrections to existing data.⁴¹ WIAW had repeatedly failed to submit Form 477 data as required from the date when it began its business. It attempted, despite its being a delinquent filer, to use the challenge process to exclude areas based upon overdue, uncertified data. And its claim to have deployed voice service and fixed broadband service with speeds of 25/3 Mbps or greater to the identified census blocks could not be verified because the certifications of data necessary to support those assertions by the April 10 challenge deadline were missing. Every Form 477 filing must be certified as accurate by an official from the entity submitting the filing.⁴² Absent this certification, a Form 477 filing is not complete and cannot be relied upon. Because WIAW was not a current 477 filer and because its challenge could not be verified with certified December 2019 data, WIAW's Form 477 challenge was properly rejected.⁴³

18. We recognize petitioner's argument that the Commission aims to fund only communities not yet served, and that WIAW seeks to exclude areas from the auction as served.⁴⁴ However, the Commission also aims to not readily exclude areas unless verifiable data support their exclusion, because the effects of depriving those areas of broadband funding are both long-term and significant. Given the lack of timely, certified Form 477 data, and that WIAW seeks to prevent areas from having the

³⁷ Petition at 3 (asserting that WIAW's challenge was comprised of blocks that it had served as of June 2019).

³⁸ *Preliminary Eligible Areas Public Notice*, 35 FCC Rcd at 2685.

³⁹ *Updated Eligible Areas Public Notice*, 35 FCC Rcd at 6500.

⁴⁰ Furthermore, 1,174 census blocks of 1,933 blocks challenged were already ineligible (as otherwise served), and the other data were not considered because they did not conform to the challenge process requirements.

⁴¹ 47 CFR §§ 1.7001(b),(e); *see also* Form 477 Instructions at <https://us-fcc.app.box.com/v/Form477Instructions>.

⁴² *See, infra*, para. 8; Form 477 Filing Instructions at 32.

⁴³ In its petition, WIAW argues that the Bureau had accepted similar challenges from other service providers. Those challenges, however, were based on certified Form 477 data, which WIAW had failed to submit on time. Although WIAW seems to allege that it was updating its filings, Petition at 3, the petition notes that on July 13, 2020, WIAW "further supplemented these data with additional retrospective filings showing its service area, as of December 31, 2019; June 30, 2018; and December 31, 2017." Petition at 3 n.10.

⁴⁴ Petition at 5.

opportunity to receive support in Auction 904, our determination here is consistent with the Commission's goals.⁴⁵

19. *Subsidized Census Block Challenge*. Petitioner also requests reconsideration of certain census blocks' eligibility based on the areas being subject to service provider commitments under a federal or state subsidy program to provide 25/3 Mbps service or better. To support its claim, it points to a grant agreement executed on May 15, 2020 with the State of Iowa's Chief Information Officer under the Empower Rural Iowa Broadband Grant Program.⁴⁶ WIAW states that under the agreement, it has received a Notice of Intent to Award more than \$1 million from the State of Iowa to offer broadband with speeds of 25/3 Mbps or greater throughout 4,528 census blocks in western Iowa.⁴⁷

20. In the *Rural Digital Opportunity Fund Report and Order*, the Commission indicated an interest in avoiding duplicative funding, but also indicated that it did not intend to interfere with the availability of other funding sources.⁴⁸ Accordingly, we indicated in the *Preliminary Eligible Areas Public Notice* that subsidy challenges could only be based upon "census blocks where a provider has an enforceable commitment to offer broadband service at 25/3 Mbps or better and for which funding has already been paid or a formal commitment has been executed."⁴⁹

21. WIAW's subsidy agreement was not executed by the April 10, 2020, deadline for the challenge process, nor was it brought to staff's attention before the petition was filed in July, long past when results of the challenge process were announced.⁵⁰ WIAW presents no new facts or evidence indicating that it had an executed subsidy agreement by the challenge process deadline. Accordingly, we deny WIAW's petition to remove these census blocks from eligibility based upon a subsidy agreement.

IV. ORDERING CLAUSE

22. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 4(i), 214, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 214, 254, 303(r), and 403, and sections 0.91, 0.291, and 1.106 of the Commission's rules, 47 CFR §§ 0.91, 0.291 and 1.106, the petition for reconsideration filed by WIAW IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Kris Monteith
Chief, Wireline Competition Bureau

⁴⁵ We note that announcing the results of the limited challenge process before the short-form filing window opened on July 1, 2020 provided needed information to potential applicants so they could determine which areas were likely to be eligible for support and, based upon this information, determine whether to apply to participate in the auction.

⁴⁶ Petition at 4.

⁴⁷ Petition at 9.

⁴⁸ *Rural Digital Opportunity Fund Report and Order*, 35 FCC Rcd at 692, para. 14 & n.32 ("Our intent is to exclude areas where 25/3 Mbps or better service has been or will be deployed without Rural Digital Opportunity Fund support, not to prevent winning bidders from accessing other funding sources, including from states.").

⁴⁹ *Preliminary Eligible Areas Public Notice*, 35 FCC Rcd at 2686.

⁵⁰ We note that, despite the opportunity to do so, the State of Iowa did not file a challenge to any census blocks on the eligibility list.

Giulia McHenry
Chief, Office of Economics and Analytics