



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON DC

Mike O'Rielly
Commissioner

September 10, 2018

Christopher McLean, Acting Administrator
Rural Utilities Service
U.S. Department of Agriculture
1400 Independence Ave., SW
Washington, DC 20250-1510

Re: Broadband e-Connectivity Pilot Program Notice of Inquiry and Request for Comments,
Docket No. RUS-18-TELECOM-0004

Dear Acting Administrator McLean,

Throughout my tenure at the Federal Communications Commission, I have been committed to improving broadband access for unserved communities and stretching scarce federal dollars as much as possible. With the appropriated \$600 million from the U.S. Congress for the e-Connectivity Pilot, the Rural Utilities Service has the potential to make a real difference in the lives of those lacking access to 21st century connectivity. It is therefore imperative that pilot program funds are spent as efficiently as possible and targeted to areas most in need of support.

RUS has sought comment on identifying rural areas eligible for funding, and specifically, how to evaluate whether an area already has "sufficient access" to broadband, and how to verify broadband availability data in a proposed service area. In response to this Notice of Inquiry, I respectfully offer some guidance based on my experience from working on the FCC's efforts to connect rural and remote parts of the country.

Focus on Truly Unserved Populations in Defining "Sufficient Access"

In implementing the e-Connectivity Pilot and defining the standard for "sufficient access" to broadband, I urge RUS to focus on bringing broadband to the truly unserved. Funding available for broadband deployment is scarce, and many areas, particularly those in the hardest-to-reach parts of the country, remain subject to coverage gaps. Therefore, in defining whether an area has "sufficient access," RUS should first and foremost direct funding to those communities with no access at all.

Certain stakeholders may advocate for a more expansive definition of "sufficient access," focused on the number of competitors in a given area. Defining "sufficient access" in such a manner would be a disservice to the authorizing statute and to the American people. Congress explicitly focused on the unserved, stipulating that funding should go to areas where households lack access. Subsidizing buildout in areas where one or multiple providers already offers service is an ineffective use of limited resources and moreover undermines parties' incentives to invest in broadband buildout in the future.

Nor should RUS expand the definition of “sufficient access” to reflect a gold-plated version of the statutory speed requirement for eligibility. The pilot program will produce the greatest benefit by focusing specifically on unserved areas—not by limiting eligibility to particular technologies.¹ “Sufficient access” should be determined from a *technology-neutral* point of view, and there should be no restrictions that would favor or disfavor a certain type of service offering. Further, given the varying degrees of cost-effectiveness among broadband technologies in different locations, a technology-neutral policy is especially critical to stretching program dollars as far as possible.

Prevent Funding Recipients from Cherry-Picking Locations

To help the truly unserved, I urge RUS to identify “eligible rural areas” on a sufficiently granular level to direct funding to those areas where broadband would not be built otherwise. While Congress has stipulated that funding should only go to those areas where at least 90 percent lack sufficient access, “area” is a broad term, and depending on how narrowly or how expansively RUS defines “area,” there is a significant risk of providers directing funding towards cherry-picked locations within the 90 percent area, where the cost of providing service is the lowest-cost and highest-return, but broadband is already available. This risk is especially evident given recent analysis of the FCC’s semi-annual Form 477 Data, which finds that rural areas often feature small town cores with roughly the same broadband access as the suburbs of metro regions.² Although those small town cores are less expensive to serve and therefore more liable to be subject to cherry-picking, it is the unserved locations outside of those town cores that need broadband support the most.

Exclude Areas Funded by Other Agencies

Prior to investing new funds into support for broadband, I can’t impress upon RUS enough to take account of existing federal broadband programs and coordinate with agencies to avoid overbuilding and duplicative funding. While the Appropriations Act explicitly precludes overbuilding or duplicating other RUS broadband loan recipients, a cost-effective pilot program would also prohibit the overbuilding of or providing duplicative funding to any federal funding recipient.

Like RUS, the FCC has been charged with bringing broadband to unserved areas of the nation, and the Connect America Fund (CAF) is the FCC’s primary subsidy mechanism for rural, high-cost areas, with a budget of \$4.5 billion per year. The FCC recently concluded the CAF Phase II Auction will direct \$1.488 billion to over 700,000 homes throughout the nation over the next ten years. Given the long-term nature of CAF II funding, and since recipients have flexibility on which areas are built out and when within the ten-year timeline, broadband deployment data, including the National Broadband Map, will not immediately reflect the CAF obligations assumed by providers. Therefore, to avoid duplication among federal efforts and protect the FCC’s CAF investment, it is imperative that the RUS work with the FCC to identify those areas already receiving Universal Service Fund dollars and exclude those areas

¹ See Doug Brake, “A Policymaker’s Guide to Rural Broadband Infrastructure,” Information Technology & Innovation Foundation at 9 (April 2017), http://www2.itif.org/2017-rural-broadband-infrastructure.pdf?_ga=2.10337525.1194762583.1536171770-1669814130.1536171770.

² See Will Rinehart, “A Look at Rural Broadband Economics,” American Action Forum at 5 (August 14, 2018), <https://www.americanactionforum.org/print/?url=https://www.americanactionforum.org/research/a-look-at-rural-broadband-economics/>.

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from pilot program funding. Likewise, the RUS should work with the FCC to identify those remaining remote unserved areas of the country not receiving CAF II support, so RUS can step in and help fill those coverage caps. In addition to working with the FCC, RUS should similarly collaborate with NTIA to avoid overbuilding or duplicating recipients of the Broadband Technology Opportunities Program.

Finally, to make the biggest impact at the lowest cost and minimize wastefulness, I urge RUS to consider implementing market mechanisms, including reverse auctions, to allocate new broadband loans or grants under the program. The FCC has seen significant success in using competitive bidding to award universal service support, incenting providers to connect consumers at the lowest cost, and stretching Mobility Fund and CAF dollars much further than a traditional funding mechanism would. Distributing RUS pilot program funding via reverse auction would do a great service to the American taxpayer, and I encourage RUS to work with the FCC and learn from its valuable experience in structuring reverse auction rules and procedures.

I appreciate your consideration of these views and wish you well in ensuring any RUS funds are used for the greatest good possible.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael O'Rielly". The signature is fluid and cursive, with a large initial "M" and a long, sweeping tail.

Michael O'Rielly