

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

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

ORDER ON RECONSIDERATION

Adopted: September 16, 2020

Released: September 29, 2020

By the Commission: Commissioner Rosenworcel approving in part, dissenting in part, and issuing a statement; Commissioner Starks approving in part and dissenting in part.

I. INTRODUCTION

1. Earlier this year, the Commission adopted final rules for the Rural Digital Opportunity Fund, the Commission's biggest step yet in bringing digital opportunity to Americans living on the wrong side of the digital divide.¹ Using a two-phased competitive process, the Rural Digital Opportunity Fund will allocate up to \$20.4 billion to connect millions of unserved rural homes and small businesses to high-speed broadband.² Phase I of the Rural Digital Opportunity Fund (Auction 904) will provide up to \$16 billion to target areas that current data indicate are unserved, including approximately 5.4 million unserved rural homes and businesses.³ Auction 904 will provide support for networks offering speeds of at least 25/3 Mbps, and give preference to bids to provide higher speeds and lower latency. Auction 904 is scheduled to commence on October 29, 2020.⁴

2. In the *Rural Digital Opportunity Fund Order*, the Commission laid out its approach for determining the census blocks eligible for Phase I support and established a limited challenge process for parties to identify, in part, areas that had been awarded funding by a federal or state broadband subsidy 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. The Illinois Office of Broadband and the Vermont Department of Public Service seek reconsideration of this aspect of the *Rural Digital Opportunity Fund Order* and ask the

¹ See *Rural Digital Opportunity Fund; Connect America Fund*, WC Docket Nos. 19-126, 10-90, Report and Order, 35 FCC Rcd 686 (2020) (*Rural Digital Opportunity Fund Order*).

² *Id.*

³ *Id.* at 689-90, para. 8.

⁴ See *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, DA 20-665 (rel. June 25, 2020) (*Auction 904 Updated Eligible Areas PN*); *Rural Digital Opportunity Fund Phase I Auction Scheduled for October 29, 2020; Notice and Filing Requirements and Other Procedures for Auction 904*, AU Docket No. 20-34, WC Docket Nos. 19-126, 10-90, Public Notice, FCC 20-77 (rel. June 11, 2020).

Commission to reconsider its approach to partnering with states that have broadband funding programs.⁵ In addition, the Illinois Office of Broadband asks the Commission to increase the minimum speeds it will support in Auction 904 to 50/5 Mbps. Heartland Telecommunications Company d/b/a Premier Communications seeks clarification regarding the eligibility of areas for Phase II of the Rural Digital Opportunity Fund.⁶ For the reasons set forth below, we find insufficient grounds to reconsider our decisions regarding the eligibility of certain census blocks or the minimum performance tier for Auction 904. We do, however, clarify certain aspects regarding the eligibility of areas for Phase II of the Rural Digital Opportunity Fund.

II. BACKGROUND

3. In the *Rural Digital Opportunity Fund Order*, the Commission determined that support would be available only for specific eligible census blocks, noting the importance of ensuring that “support is awarded in an efficient and cost-effective manner and does not go toward overbuilding areas that already have service.”⁷ To develop the preliminary list of eligible areas, the Commission directed the Wireline Competition Bureau to use the Connect America Cost Model using the most recent publicly available FCC Form 477 data to identify census blocks that were wholly unserved with broadband at speeds of at least 25/3 Mbps.⁸ To educate and engage with states on the Rural Digital Opportunity Fund, the Commission’s Rural Broadband Auctions Task Force conducted extensive outreach to numerous states and associations of state public utility commissions from August 2019 through June 2020, including presentations to every state that requested one.⁹

⁵ See Petition for Reconsideration of Illinois Office of Broadband, WC Docket Nos. 19-126, 10-90 (Apr. 9, 2020) (Illinois Office of Broadband Petition); Vermont Department of Public Service Petition for Reconsideration and Clarification, WC Docket No. 19-126 (Apr. 3, 2020) (Vermont Department of Public Service Petition).

⁶ Petition for Clarification or, in the Alternative, Reconsideration of Heartland Telecommunications Company d/b/a Premier Communications, WC Docket Nos. 19-126, 10-90 (Apr. 9, 2020) (Premier Petition).

⁷ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 7692, para. 12.

⁸ *Id.* at 690, para. 10; see also *Wireline Competition Bureau Announces Connect America Phase II Support Amounts Offered to Price Cap Carriers to Expand Rural Broadband*, Public Notice, 30 FCC Rcd 3905, 3905-06 (WCB 2015) (adopting CAM v4.3).

⁹ See, e.g., Pennsylvania Public Utilities Commission, *Notice: Public Forum and Conference Call on the Federal Communications Commission’s Rural Digital Opportunity Fund*, 50 Pa.B. 435 (Jan 18, 2020) (providing notice of FCC webinar for Pennsylvania on Jan. 16, 2020); Nebraska Rural Broadband Task Force, *Up to \$59 million in funding for Nebraska available through Rural Digital Opportunity Fund*, (announcing FCC webinar for Nebraska on April 28, 2020), <https://ruralbroadband.nebraska.gov/> (last visited August 5, 2020); Indiana Broadband Office, *FCC/RDOF Webinar*, (announcing FCC webinar for Indiana on May 26, 2020), <https://www.in.gov/indianabroadband/> (last visited August 5, 2020); California Public Utilities Commission, *FCC Presentation on Auction 904 (Hosted by CPUC)*, (providing notice of FCC webinar for California on June 10, 2020), <https://www.cpuc.ca.gov/broadbandfederal/funding/> (last visited August 5, 2020). The Illinois Office of Broadband, however, recently asserted that the “Commission’s decision to forego outreach and coordination with their state colleagues in the context of the RDOF has forced IOB to delay its preferred timeline for accepting applications and awarding funds, so as not to jeopardize the plans of any potential bidders in Auction 904.” See Letter from Cynthia B. Schultz and Richard R. Cameron, Counsel to Illinois Office of Broadband, to Marlene H. Dortch, Secretary, FCC, at 1 (Aug. 14, 2020) (Illinois Office of Broadband Aug. 14 Ex Parte). In addition to the extensive outreach to states and state organizations detailed above, the Rural Broadband Auctions Task Force presented the details of Auction 904 to the State Broadband Leaders Network on February 12, 2020 and the National Association of Regulatory Utility Commissioners (NARUC) Mid-America Regional Conference on April 28, 2020. Though the State of Illinois is a member of both these groups, it did not request that the Rural Broadband Auctions Task Force provide a state-specific presentation, as many other states did. Moreover, as explained below, the Commission has completed the Auction 904 limited challenge process and released an updated list of eligible areas. See *infra* para. 4. Thus, there is no apparent reason for the Illinois Office of Broadband to delay awarding funding for broadband projects in the state. Finally, we note that the Illinois Office of Broadband failed to mention that it would have to “delay its
(continued....)

4. On March 17, 2020, the Bureau released the list of census blocks deemed initially eligible for Auction 904.¹⁰ Based on FCC Form 477 data as of June 30, 2019, the preliminary list included census blocks located in price cap carrier territories that are wholly unserved by the incumbent price cap carrier or an unsubsidized competitor with voice and broadband at speeds of 25/3 Mbps or higher and that fall into one of six specific categories.¹¹ In order to ensure that limited federal resources target unserved areas and do not overbuild existing networks, the Commission provided for a limited challenge process to identify areas that had been served with voice and 25/3 Mbps or better broadband services since June 30, 2019; had been awarded funding by a federal or state broadband subsidy 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; or where rate-of-return carriers did not expect to extend broadband in satisfaction of their deployment obligations.¹² The Bureau conducted a limited challenge process, and on June 25, 2020, the Bureau and the Office of Economics and Analytics released an updated list of eligible areas for Auction 904 that incorporated the results of the challenge process.¹³ The Bureau received submissions from four state broadband authorities and 30 service providers receiving broadband subsidies from states, identifying areas where those states were already providing support for broadband networks.

5. *Vermont Department of Public Service and Illinois Office of Broadband Petitions.* Both the Vermont Department of Public Service and the Illinois Office of Broadband petitions cover substantially the same issue—namely, seeking reconsideration of the Commission’s approach to the eligibility of census blocks receiving funding from state broadband programs. The Vermont Department of Public Service argues that the Commission should reconsider its decision to exclude from Auction 904 census blocks that receive state broadband subsidies. First, the Vermont Department of Public Service contends that the Commission failed to provide adequate notice for the removal of such census blocks, arguing that “[n]o comment was ever sought regarding the exclusion of census blocks that receive funds from similar federal or state subsidy programs” and that the Commission offered no “explanation or justification for the exclusionary criteria.”¹⁴ The Vermont Department of Public Service further argues that including such census blocks in Auction 904 would enable the Commission to “maximize the efficient use of both state and federal dollars without limiting the ability of the state to engage in self-help to close the digital divide.”¹⁵ Specifically, the Vermont Department of Public Service suggests that the Commission use location-based broadband availability data gathered by states to determine eligible areas or, alternatively, partner with states to create a grant program as an alternative to Auction 904.¹⁶ Finally, the Vermont Department of Public Service requests clarification on how census blocks receiving state broadband funding or ReConnect awards will be excluded from Auction 904 and whether these blocks also will be excluded from Phase II of the Rural Digital Opportunity Fund.¹⁷

(Continued from previous page) _____
preferred timeline for accepting applications and awarding funds” in any of its filings prior to its August 14 *ex parte*. See Illinois Office of Broadband Aug. 14 *Ex Parte* at 1.

¹⁰ *Wireline Competition Bureau Releases Preliminary List and Map of Eligible Areas for the Rural Digital Opportunity Fund Phase I Auction*, Public Notice, DA 20-275 (WCB Mar. 17, 2020) (*Auction 904 Preliminary Eligible Areas Public Notice*).

¹¹ *Rural Digital Opportunity Fund Order*, 35 FCC Red at 692, para. 13 & n.30 (defining unsubsidized competitor); *Auction 904 Preliminary Eligible Areas Public Notice*.

¹² *Rural Digital Opportunity Fund Order*, 35 FCC Red at 692-93, para. 14.

¹³ *Auction 904 Updated Eligible Areas Public Notice*.

¹⁴ Vermont Department of Public Service Petition at 4-6.

¹⁵ *Id.* at 8-10.

¹⁶ *Id.* at 10-12.

¹⁷ *Id.* at 12-14.

6. Similarly, the Illinois Office of Broadband proposes that the Commission gather information on whether Auction 904 participants intend to apply for any state-issued broadband funding and then coordinate with these states to “maximize efficiency and minimize duplication” and “help state broadband programs across the nation leverage federal RDOF funds as they manage their own programs.”¹⁸ The Illinois Office of Broadband asks the Commission to account for the availability of state broadband funding within the context of Auction 904 by making the receipt of state funding a positive weighting factor, providing a federal match in support of state funding, or providing block grants of Rural Digital Opportunity Fund support to states.¹⁹ The Illinois Office of Broadband also requests that the Commission eliminate the 25/3 Mbps Minimum performance tier from Auction 904, make census blocks that may have 25/3 Mbps service, but lack 50/5 Mbps service, eligible for Auction 904 support, and include a scalability requirement to ensure that funded services are “future-proof.”²⁰

7. The Massachusetts Department of Telecommunications and Cable and the Colorado Broadband Office support the Vermont Department of Public Service’s petition and encourage the Commission to more closely work with those states that have broadband funding programs.²¹ Both Hughes Network Systems, LLC (Hughes) and the Wireless Internet Service Providers Association (WISPA) oppose the Illinois Office of Broadband’s petition.²² Generally, Hughes argues that increasing the baseline speed tier for Auction 904 to 50/5 Mbps, as proposed by the Illinois Office of Broadband, would exhaust the Auction 904 budget “without extending service to many people who desperately need it.”²³ WISPA similarly opposes the Illinois Office of Broadband proposal to eliminate the 25/3 Mbps performance tier, noting that it would be inconsistent with the Commission’s definition of “advanced telecommunications capability” and would result in fewer areas being supported through Auction 904.²⁴ WISPA also objects to the Illinois Office of Broadband’s proposed “scalability” requirement and expresses concern regarding the time and complexity that would be required for the Commission to work more closely with states on collaborative partnerships. Finally, WISPA contends that the Vermont Department of Public Service’s claim that the Commission failed to provide adequate notice for the removal of census blocks receiving state broadband subsidies is unfounded.²⁵

8. In its reply, the Vermont Department of Public Service claims that the Commission failed to “describe the range of alternatives being considered with reasonable specificity.”²⁶ The Vermont Department of Public Service also contends that separate mechanisms and state-specific rules are not necessary to maximize the efficient use of state and federal dollars, and thus that state-federal

¹⁸ Illinois Office of Broadband Petition at 6.

¹⁹ *Id.* at 7-8.

²⁰ *Id.* at 10-11

²¹ Letter from Anthony Neal-Graves, Executive Director, Colorado Broadband Office, to Chairman Ajit Pai, FCC (Apr. 17, 2020); Letter from Karen Charles Peterson, Commissioner, and William Bendetson, Attorney Massachusetts Department of Telecommunications and Cable, to Marlene H. Dortch, Secretary, FCC (Apr. 15, 2020).

²² Opposition of Hughes Network Systems, LLC to Petition for Reconsideration of Illinois Office of Broadband (May 18, 2020) (Hughes Opposition); Opposition of the Wireless Internet Service Providers Association to Petitions for Reconsideration (May 18, 2020) (WISPA Opposition).

²³ Hughes Opposition at 2.

²⁴ WISPA Opposition at 7-8.

²⁵ *Id.* at 6-7.

²⁶ Reply of Vermont Department of Public Service to Opposition to Petition for Reconsideration, at 2 (May 26, 2020) (citing *Prometheus Radio Project v. FCC*, 652 F.3d 431, 450 (3d Cir. 2011) (Vermont Department of Public Service Reply).

collaboration would not be overly complicated or time-consuming.²⁷ Likewise, the Illinois Office of Broadband argues that WISPA overstates the risk of delay to Auction 904 that would result from increased federal-state coordination.²⁸ Finally, the Illinois Office of Broadband agrees with the Vermont Department of Public Service that the Commission failed to provide adequate notice for the exclusion of the blocks receiving funding from state broadband programs from Auction 904.²⁹

9. *Premier Petition.* Premier seeks “clarification that the FCC has not definitively resolved the question of what areas will be included in the RDOF Phase II auction” or foreclosed the possibility of providing ongoing support in areas that currently receive Connect America Fund (CAF) Phase II model-based support, but where continued service is unsustainable without such support.³⁰ Alternatively, Premier seeks reconsideration if the Commission has determined that only high-cost price cap areas lacking 25/3 Mbps will be eligible for Phase II of the Rural Digital Opportunity Fund.³¹ Premier explains that it assumed CAF Phase II performance obligations after acquiring certain properties from Consolidated Communications in 2016, but determined that deploying a fiber network “would be the lower cost solution to meeting the needs of its customers over the longer term.”³² Premier states that it expected to be able to compete for continuing support in these areas through a market-based mechanism at the end of the CAF Phase II term.³³ Because the Commission excluded from Auction 904 census blocks where a terrestrial provider offers voice and 25/3 Mbps broadband service, however, these areas were deemed ineligible for Auction 904.³⁴ Several parties support Premier’s petition, explaining that the Commission is required to provide “specific, predictable and sufficient” support and that eliminating support for these areas would be inconsistent with long standing Commission policy by disincentivizing providers to exceed current baseline standards for universal service.³⁵

III. DISCUSSION

10. We deny both the Illinois Office of Broadband and the Vermont Department of Public Service requests to reconsider our decisions regarding the eligibility of certain census blocks for Auction 904 and the extent of federal-state partnership efforts. Excluding specific areas where states have already committed funding in exchange for enforceable deployment obligations is consistent with the Commission’s universal service policy and will ensure that our scarce universal service resources are put to the best possible use by maximizing the unserved areas that will receive support through Auction 904 to deploy robust broadband service. However, we grant the Vermont Department of Public Service’s request to clarify the process by which census blocks receiving support from a state broadband initiative to deploy broadband service of 25/3 Mbps or greater were removed from eligibility for Auction 904. Additionally, consistent with Premier’s request, we clarify that the Commission has not yet made a final

²⁷ Vermont Department of Public Service Reply at 4.

²⁸ Reply of Illinois Office of Broadband to Opposition to Petition for Reconsideration, at 3 (May 26, 2020) (Illinois Office of Broadband Reply).

²⁹ *Id.* at 7-8.

³⁰ Premier Petition at 2.

³¹ *Id.* at 2.

³² *Id.* at 2-3.

³³ *Id.* at 3.

³⁴ *Id.* at 4.

³⁵ See generally Joint Reply of the Rural State Associations (May 26, 2020); USTelecom – The Broadband Association Reply Comments on Heartland Telecommunications Company of Iowa’s Petition for Reconsideration (May 26, 2020); Reply of NTCA—The Rural Broadband Association to Petition for Clarification or, in the Alternative, Reconsideration (May 26, 2020) (NTCA Reply Comments); Comments of the ACAM Broadband Coalition (May 18, 2020).

determination on the areas eligible for Phase II of the Rural Digital Opportunity Fund. Providing this clarification will address concerns expressed by carriers that the Commission already has determined whether future support will be available in areas that exceed the current baseline standard for universal service.

11. *Auction 904 Census Block Eligibility Determinations Preserve Scarce Universal Service Resources.* We decline to reconsider our decision to make ineligible for Auction 904 those census blocks where a broadband provider is receiving support from a state broadband initiative to deploy broadband of 25/3 Mbps or better.³⁶ However, consistent with the Vermont Department of Public Service’s request, we clarify the process by which these census blocks were removed from eligibility for the auction.

12. Because the Commission does not collect data regarding state broadband programs and the providers receiving support through those programs, we do not have the ability to unilaterally remove such census blocks from eligibility for Auction 904. Instead, we directed the Bureau to conduct a limited challenge process to provide an opportunity for entities “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.”³⁷ This process allowed states and providers an opportunity to identify such blocks through the challenge process. If neither a state nor a provider receiving state support demonstrated that specific census blocks should be made ineligible for Auction 904 due to the presence of state broadband funding, then the eligibility of those blocks was not affected on that basis.³⁸ Four states (Vermont, Nebraska, Missouri, and Indiana) and 30 providers receiving state broadband subsidies took advantage of this opportunity and submitted challenges identifying and seeking to remove from auction eligibility census blocks where those states were already providing broadband subsidies.³⁹ Given that Commission staff only removed census blocks subject to state broadband subsidies where either the state itself or the provider receiving state support to deploy broadband in that area identified specific census blocks, we disagree that the Commission foreclosed states from participating in the challenge process. Indeed, petitioner Vermont Department of Public Service successfully participated in the challenge process as one of four state broadband authorities that submitted a list of census blocks to the Commission to be removed from Phase I eligibility due to existing state subsidies in those areas.⁴⁰

13. We reject the argument advanced by both the Vermont Department of Public Service and the Illinois Office of Broadband that the Commission failed to provide adequate notice that census blocks receiving state support to provide service of 25/3 Mbps or greater would be ineligible for Auction 904.⁴¹ In the *Rural Digital Opportunity Fund Notice of Proposed Rulemaking* (Notice), the Commission specifically proposed “to exclude those census blocks where a terrestrial provider offers voice and 25/3

³⁶ Illinois Office of Broadband Petition at 5 (“stronger federal-state partnership would help coordinate state and federal broadband investment in order to maximize efficiency and minimize duplication”); Vermont Department of Public Service Petition at 8 (“VTDPS urges the Commission to instead partner with states that have broadband initiatives in order to promote the efficient use of both federal and state broadband dollars and make universal service a reality”).

³⁷ *Rural Digital Opportunity Fund Order*, 35 FCC Red at 692-93, para. 14.

³⁸ Certain census blocks may have been deemed ineligible as a result of FCC Form 477 challenges. *See Auction 904 Updated Eligible Areas PN* at 2 (noting that “[t]he majority of challenges were submitted by FCC Form 477 filers identifying census blocks that became served with voice and 25/3 Mbps or better broadband service since June 30, 2019”).

³⁹ *Id.* at Appx. In total, less than 1% of the census blocks initially deemed eligible for Auction 904 were subsequently removed due to state broadband funding, including none in Illinois and only 42 in Vermont. *See id.*

⁴⁰ *See id.* *See also* Comments of Vermont Department of Public Service (Apr. 13, 2020).

⁴¹ Vermont Department of Public Service Petition at 4-6; Illinois Office of Broadband Reply at 7-8.

Mbps broadband service” from Auction 904.⁴² The express purpose of that proposal was to avoid expending limited Rural Digital Opportunity Fund support in areas that would otherwise be expected to be served without such funds, thereby avoiding wasteful overbuilding.⁴³ Also excluding from eligibility those areas that are all but certain to be served with 25/3 Mbps service in the near future because they are already receiving support from state broadband funding mechanisms is an obvious extension of the Commission’s proposal in the Notice that Rural Digital Opportunity Fund support should be deployed only where needed—consistent with the Commission’s longstanding universal service policy of ensuring that support is not provided to overbuild areas where another provider deploys service meeting the Commission’s requirements.⁴⁴ Indeed, commenters made this very point in response to the Notice⁴⁵—including states urging the Commission to “avoid potential duplication in support.”⁴⁶

14. Census blocks receiving state broadband grants were removed from the eligible areas list only where either the state itself or the state-support recipient notified the Commission of the subsidy and after Commission staff verified that the grant recipient had an enforceable, binding commitment to provide 25/3 Mbps or better broadband.⁴⁷ Removing these census blocks prevents providers from bidding for and receiving finite universal service support in areas where they already have a binding state obligation to deploy broadband service that meets the Commission’s standards. Including such census blocks in the Rural Digital Opportunity Fund Phase I auction would waste limited federal resources because it would either pay one provider twice for the same network or pay a second provider to deploy a network in an area where a provider is already required to build one, all at the expense of unserved areas that may not get winning bids in the auction.

15. We also disagree that additional pre-auction coordination between the Commission and state broadband authorities in determining eligibility for the Phase I auction is necessary to maximize deployment in currently unserved areas. Petitioners overlook the significant benefit of our existing

⁴² See *Rural Digital Opportunity Fund; Connect America Fund*, WC Docket Nos. 19-126, 10-90, Notice of Proposed Rulemaking, 34 FCC Rcd 6778, 6795, para. 48 (2019) (*Rural Digital Opportunity Fund NPRM*).

⁴³ *Rural Digital Opportunity Fund Notice*, 34 FCC Rcd at 6782, paras. 12-13 ((seeking to “ensure that [the Commission’s] limited universal service support is awarded in an efficient and cost-effective manner, without overbuilding to areas that already have service” and proposing that the Rural Digital Opportunity Fund framework be guided, by, among other goals, “reducing waste and inefficiency in the high-cost program”).

⁴⁴ *Connect America Fund et al.*, WC Docket No 10-90 et al., Order on Reconsideration, 33 FCC Rcd 1380, 1398, para. 46 (2018); *Connect America Fund et al.*, WC Docket No 10-90 et al., Report and Order et al., 31 FCC Rcd 3087, 3115, para. 71 (2016); *Connect America Fund*, WC Docket No 10-90, Order, 31 FCC Rcd 12086, 12096, para. 35 (2016); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17722, para. 149 (2011), *aff’d sub nom. In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014) (citations omitted).

⁴⁵ See NCTA Comments at 4-5 (“The Commission also should consider eliminating from eligibility areas that have received or are committed to receive funding to reach 25/3 Mbps broadband through state support programs”); Verizon Comments at 8-9; NTCA Comments at notes 30 and 68; NCTA Reply at 9; AT&T Reply Comments at 18;

⁴⁶ See Comments of the Nebraska Public Service Commission, at 3 (Sept. 19, 2019) (recommending that the Commission “receive input from carriers and states relative to broadband support that has been awarded for census blocks that are not built out to 25/3 Mbps to avoid potential duplication in support”); Letter from Anthony Neal-Graves, Executive Director, Colorado Broadband Office, to Marlene H. Dortch, Secretary, FCC, at 2 (Oct. 21, 2019) (agreeing with “comments filed by the Nebraska Public Service Commission (NPSC), stating “RDOF support may be better targeted to areas where no support has been planned or awarded” from state and federal programs). *But see* Pennsylvania PUC Reply Comments at 30 (“Because state funding coupled with additional federal funding will help ensure that areas that need broadband deployment receive it in a cost-effective manner, the PA Joint Commenters disagree with NCTA’s and Verizon’s suggestion that the Commission exclude from the RDOF auction any census block where a winning bidder is also receiving other additional funding support”).

⁴⁷ *Auction 904 Updated Eligible Areas PN* at 2.

process to coordinate efficient state and federal spending: Because providers maintain the ability to leverage outside support in determining their bidding strategy for Auction 904, as well as in seeking additional support from states, it is not necessary to revise the Commission's established auction framework in order to align Auction 904 with specific state broadband programs. For example, a provider currently receiving state broadband funding to deploy service at speeds below 25/3 Mbps could nevertheless leverage that state support in Auction 904 to underbid potential bidders that did not already have the benefit of state support. As a result, the provider would require less Auction 904 support to deploy the required broadband service. In such a case, because of the provider's relatively lower bid, more funding would be available to bidders offering to serve other areas, while at the same time the state would benefit from the service provider deploying a better network without costing the state any additional support. Conversely, a state could incentivize service providers that receive Auction 904 support to deploy faster service than the provider had bid for in Auction 904, resulting in faster service being available in that area and requiring less state funding than it otherwise may have needed without Auction 904 support.⁴⁸ Indeed, Pennsylvania encouraged a similar approach in the CAF Phase II auction.⁴⁹ As we previously noted, "[o]ur 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."⁵⁰

16. Moreover, as an independent basis for our decision here and as we noted in the *Rural Digital Opportunity Fund Order*, adopting specific rules for Auction 904 to account for state funding, such as weighting factors, bidding credits, or block grants, would result in "significant delay in getting support to needy rural areas lacking broadband."⁵¹ Adopting such a mechanism to account for the variety of state funding programs at this point in the Rural Digital Opportunity Fund proceeding would require an additional rulemaking, resulting in delayed implementation of Auction 904. Proposing such a fundamental revision to the proposed auction structure would have been more appropriate in response to the Notice, rather than on reconsideration and after the Commission already has made several critical auction decisions. Neither the Illinois Office of Broadband nor the Vermont Department of Public Service submitted proposals to this effect at that time. As we have observed previously, "[i]t is imperative that the Commission take prompt and expeditious action to deliver on its goal of connecting all Americans, no matter where they live and work."⁵² The recent COVID-19 pandemic has stressed the importance of furthering this objective by highlighting the continuing and pressing need for reliable, robust broadband services across the country. Thus, we intend to move as expeditiously as possible to provide Rural Digital Opportunity Fund support that will increase deployment to the areas in most need of these services.

17. Finally, we decline to adopt the Illinois Office of Broadband's proposals to eliminate the Minimum performance tier, make census blocks that lack access to both fixed voice and 50/5 Mbps broadband services eligible for Auction 904, and introduce a scalability requirement to ensure networks are future-proof.⁵³ As we observed when we adopted the Auction 904 performance tiers, "some sparsely populated areas of the country are extremely costly to serve and providers offering only 25/3 Mbps may

⁴⁸ See Illinois Office of Broadband Aug. 14 *Ex Parte* at 2 (noting that it is "examining opportunities to use future awards of Connect Illinois funding to supplement RDOF support in a way that would enable Auction 904 winners in Illinois to deploy services at higher speeds than the minimum required under their RDOF obligations").

⁴⁹ See *Governor Wolf Announces New Initiative to Expand Broadband Access* (Mar. 18, 2018), available at <https://www.governor.pa.gov/newsroom/governor-wolf-announces-new-initiative-expand-broadband-access/>.

⁵⁰ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 692, n.32.

⁵¹ *Id.* at 694, n.45.

⁵² *Id.* at 687, para. 1.

⁵³ Illinois Office of Broadband Petition at 10.

be the only viable alternative in the near term.”⁵⁴ Though we have a preference for higher speeds and have adopted weights that will prioritize bids to provide faster services, we also must be mindful that deploying higher speed service may not be feasible in some areas.⁵⁵ We conclude that maintaining a Minimum performance tier of 25/3 Mbps will preserve a service option for these areas. Moreover, we continue to believe that in those areas where faster networks are economically viable, the advantages provided to bidders in higher performance tiers will ensure that the most appropriate network for a particular area is built.

18. For similar reasons, we decline to make eligible for Auction 904 census blocks served with 25/3 Mbps speeds, but lacking access to 50/5 Mbps service. Such an approach would be contrary to the Commission’s goal “to target support and provide incentives to serve areas that are known to currently lack service at speeds of at least 25/3 Mbps,”⁵⁶ and potentially would prevent us from maximizing the benefits to consumers from the use of our finite universal service budget. The Commission repeatedly has defined 25/3 Mbps as the “appropriate measure by which to assess whether a fixed service is providing advanced telecommunications capability” that “enables users to originate and receive high-quality voice, data, graphics, and video telecommunications.”⁵⁷ Moreover, we “expect bidders seeking support for the 25/3 Mbps tier will win support only in areas where higher speeds are not economical,”⁵⁸ thus ensuring that even the hardest-to-reach areas may enjoy a baseline level of broadband service. We also decline to adopt a scalability requirement. We agree with WISPA that doing so could create uncertainty for providers and potentially dampen participation in the auction by impacting the ability to “form business models and bidding strategies based on some undefined mandate to increase speeds at some undefined times during the funding period.”⁵⁹ Moreover, we have adopted weights that prioritize bids to provide faster services and anticipate that many of networks deployed using Auction 904 support will provide consumers with robust speeds. As Hughes observes, the Commission’s proposed performance metrics will ensure that consumers continue to receive this robust broadband service, both now and in the future.⁶⁰ For these reasons, we grant the request of the Vermont Department of Public Service to clarify the method by which the Commission removed census blocks receiving state broadband-deployment funding, and otherwise deny the petitions for reconsideration filed by the Illinois Office of Broadband and the Vermont Department of Public Service in all other respects.

19. *Clarification of Eligible Areas for Phase II of the Rural Digital Opportunity Fund.* Premier asks the Commission to clarify whether it has definitively resolved the eligibility of areas for Phase II of the Rural Digital Opportunity Fund. The Commission established two separate phases for the Rural Digital Opportunity Fund, with Phase I targeting census blocks that are wholly unserved with broadband at speeds of 25/3 Mbps and Phase II focusing on partially served census blocks as well as those unawarded in the Phase I auction.⁶¹ Thus, as USTelecom observes, because Phase I is focused solely on unserved areas, “it is understandable that in the RDOF R&O the Commission determined that an incumbent provider serving an area with 25/3 Mbps would be treated as an unsubsidized competitor.”⁶²

⁵⁴ *Rural Digital Opportunity Fund Order*, 35 FCC Red at 703-04, para. 34.

⁵⁵ *Id.* at 689, para. 7.

⁵⁶ *Id.* at 698-99, para. 25.

⁵⁷ See *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket No. 19-285, 2020 Broadband Deployment Report, FCC 20-50, para. 13 (2020); 47 U.S.C. § 1302(d)(1).

⁵⁸ *Rural Digital Opportunity Fund Order*, 35 FCC Red at 689, para. 7.

⁵⁹ WISPA Opposition at 8-9.

⁶⁰ Hughes Opposition at 4.

⁶¹ *Rural Digital Opportunity Fund Order*, 35 FCC Red at 690, para. 9.

⁶² USTelecom Reply at 2.

With regard to the Phase II eligibility of areas where a provider currently receives CAF Phase II model-based support and has deployed broadband service meeting the Commission's performance standards, however, we agree with Premier that clarification on this point is necessary.

20. We clarify that our approach to eligible areas for Phase I of the Rural Digital Opportunity Fund does not prejudice the areas that may be eligible for Phase II. Indeed, the Commission expressly recognized that it was focusing on the Phase I eligible areas in the *Rural Digital Opportunity Fund Order* “[b]ecause we will have an additional opportunity to seek comment on how best to target Phase II support as we gather more granular data on where broadband has been actually deployed.”⁶³ Thus, we conclude that it is appropriate to clarify that the Commission has not made a final decision on the scope of eligible areas for Phase II of the Rural Digital Opportunity Fund. To be clear, we do not affirmatively commit at this time to making the areas highlighted by Premier eligible for Phase II. We anticipate that, following the conclusion of Phase I and the ongoing Digital Opportunity Data Collection proceeding,⁶⁴ we will seek additional comment on the Phase II framework. We expect that the lessons learned from Phase I, combined with the enhanced data gathered through the Digital Opportunity Data Collection, will help to guide our decisions on multiple aspects of Phase II, including whether incumbent providers will be eligible to participate for ongoing support in certain areas.

IV. ORDERING CLAUSES

21. Accordingly, IT IS ORDERED, pursuant to sections pursuant to the authority contained in sections 1, 2, 4(i), 4(j), 254, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 254, 405, and section 1.429 of the Commission's rules, 47 CFR § 1.429, that this *Order on Reconsideration* IS ADOPTED.

22. IT IS FURTHER ORDERED that the Petition for Reconsideration filed by Illinois Office of Broadband IS DENIED as described herein.

23. IT IS FURTHER ORDERED that the Petition for Reconsideration and Clarification filed by the Vermont Department of Public Service IS GRANTED IN PART AND DENIED IN PART as described herein

24. IT IS FURTHER ORDERED that the Petition for Clarification filed by Heartland Telecommunications Company d/b/a Premier Communications IS GRANTED as described herein.

25. IT IS FURTHER ORDERED that, pursuant to section 1.103 of the Commission's rules, 47 CFR § 1.103, this *Order on Reconsideration* SHALL BE EFFECTIVE upon publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁶³ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 690, para. 9.

⁶⁴ *See Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195, 11-10, Report and Order and Second Further Notice of Proposed Rulemaking, 34 FCC Rcd 7505 (2019).

**STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL
APPROVING IN PART, DISSENTING IN PART**

Re: *The Rural Digital Opportunity Fund Auction (Auction 904); Rural Digital Opportunity Fund; Connect America Fund*, AU Docket No. 20-34; WC Docket Nos. 19-126, 10-90

There are fundamental flaws with the Rural Digital Opportunity Fund. Regrettably, this decision does not repair them. It only doubles down.

Over my objection, the Federal Communications Commission is slated to distribute \$16 billion in universal service funding a week before the upcoming election. This represents 80 percent of the broadband support available during the next ten years, tying the agency's hands for a decade. Moreover, the data behind this distribution suffers from well-known problems. The FCC's broadband maps have an error rate as high as two-in-five. So the decision to move forward like this now drains the FCC's broadband bank account before getting our facts straight about where service is and is not on the ground.

Proceeding this way is a mistake. But adding to the error is our decision refusing to work with states to help extend the reach of broadband. In this order on reconsideration, the FCC reaffirms its earlier decision to disqualify areas from the auction that are supported by state efforts and cut off state authorities interested in working with us. Specifically, it turns down requests from Vermont and Illinois to assist with disbursement expanding high-speed infrastructure in their states. To this end, it rejects the Vermont Department of Public Service's warning that the way the funds are flowing under the Rural Digital Opportunity Fund will have the opposite of their intended effect, slowing the dispersing of broadband dollars and resulting in "less broadband buildout in the state overall." Likewise, it rejects the efforts of the Illinois Office of Broadband to urge "a stronger federal-state partnership [to] help coordinate state and federal broadband investment in order to maximize efficiency and minimize duplication."

This is unfortunate. We should have explored these kind of partnerships with Vermont, Illinois, and states across the country. After all, they understand with greater precision than we do in Washington where service is and is not in their own backyard. In other words, we should be encouraging states to work with us and not penalizing them for their efforts to bring broadband to communities that are struggling. We have this exactly backwards. For this reason, I dissent.

At the risk of being technocratic, I want to note that in one limited respect I think this decision makes the right call. It chooses not to reach conclusions here about the second stage of the Rural Digital Opportunity Fund. This part of today's decision has my support.