

February 28, 2024

Jessica Rosenworcel
Chairwoman
Federal Communications Commission
45 L Street, NE
Washington, DC 20554

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

Dear Chairwoman Rosenworcel:

The undersigned include Internet Service Providers, trade associations, state and local officials, school districts, unions and civil society organizations that are concerned about the strong possibility that large Rural Digital Opportunity Fund (RDOF) and Connect America Fund II (CAF II) areas across America will remain disconnected due to the inability or unwillingness of ISPs to fulfill their obligations to the programs. We write today to urge the FCC to act expeditiously to address this challenge and ensure that rural America receives the benefit of Congress' historic investment in broadband.

On August 16, 2023, an Emergency Petition filed by RDOF winners requested, among other things that should also be considered, a brief amnesty period that would allow them to relinquish their awards without having to bear the full weight of penalties that the law allows. The undersigned ask that the FCC grant that request (including extending it to CAF II awardees) or otherwise provide a mechanism for relinquishment that ensures that thousands of communities across rural America are not disconnected from the benefits of reliable and affordable broadband Internet.

As you know, the Infrastructure Investment and Jobs Act (IIJA) created the Broadband Equity Access and Deployment (BEAD) Program, a \$42.5 billion fund administered by the National Telecommunications and Information Administration (NTIA) that will provide US states and territories the resources to deploy broadband in unserved and underserved communities. In setting the rules for the program, NTIA was clear that a state “may not treat as ‘unserved’ or ‘underserved’ any location that is already subject to an enforceable federal, state, or local commitment to deploy qualifying broadband.”¹ Therefore, any area that is subject to, among

¹ NTIA Notice of Funding Opportunity, Broadband Equity, Access and Deployment Program at 36.

other government funding programs, an RDOF or CAF II grant is not eligible for BEAD funding.²

Unfortunately, there are a large number of census blocks throughout the country where RDOF and CAF II awardees have not even begun to build their networks for a variety of reasons.³ Some, like the RDOF winners in the Emergency Petition, assert that circumstances beyond their control, including skyrocketing costs, have made building their networks impossible without further funding. Other awardees of both programs, it has been alleged, have simply sat on the money, preferring to make interest on their awards rather than building networks. Regardless of the reason RDOF and CAF II awardees cannot or choose not to fulfill their obligations, the households they were intended to serve are at risk of being left without broadband Internet access entirely because their service areas will also be ineligible for BEAD funding.

Many of the RDOF and CAF II awardees who cannot or will not deploy their networks are located in states with the greatest connectivity needs, like Missouri and Mississippi. The Commission should not permit these unserved rural communities to face this type of double whammy and be left behind once again. Many RDOF and CAF II communities have been waiting for reliable broadband, or any broadband connectivity at all, for as long as the technology has existed. It is entirely in the Commission's power to ensure that large swaths of rural America are not left out of Congress' bipartisan, once-in-a-lifetime investment to close the digital divide. It can do so by giving RDOF and CAF II awardees who cannot or do not intend to build their networks a very short and expedited amnesty period of no more than a month that allows them to relinquish all or part of their winning areas without being penalized to the full extent that the Commission's rules provide. Significantly lowering the penalties for default will incentivize awardees to relinquish their areas sooner rather than later, making the areas eligible for BEAD funding.⁴ To further incentivize relinquishment, the Commission could consider *increasing* the penalties for awardees who default after the amnesty period is over.

We recognize that a number of RDOF awardees have already defaulted and may have paid stiff penalties for doing so. But the FCC must balance any concern for parity among defaulters with the real possibility that millions of rural residents will remain disconnected from the network that is vital to full participation in modern society. The agency's statutory mandate to connect all Americans argues for bold and decisive action here.

² Any reference to CAF II herein refers only to those awards and awardees for the 100/20 speed tier, not the 25/3 speed tier. The latter areas are eligible for BEAD funding.

³ Terra Whipple, *RDOF Winners Still Have Not Built Out in Rural America*, found at

<https://www.broadband.io/c/mississippi-broadband/rdof-winners-still-have-not-built-out-in-rural-america>

⁴ Should an RDOF or CAF II awardee relinquish under the recommended amnesty program, NTIA or the state broadband office could then decide whether those ISPs would be eligible for BEAD funding in those areas.

The Commission should grant this relief without delay as time is of the essence. Most states will begin their BEAD mapping challenge process in the first half of this year, and that process will determine the final map by which the states will allocate BEAD funding. Should the Commission grant the requested brief amnesty period, the states will be able to include communities that are currently unserved or underserved but are not included on the map because of unfulfilled RDOF and CAF II commitments.

In passing the IIJA, Congress intended that every household in the US be connected to robust and affordable broadband. But that promise won't be fulfilled if communities that are penalized through no fault of their own remain ineligible for BEAD-funded networks. The FCC has the authority to rectify this situation, but it must act quickly.

We stand ready to meet with you and/or your staff to discuss this critical matter and look forward to hearing from you soon.

Sincerely,

Clay Stribling, *President & CEO*, **Amarillo Area Foundation**

Gigi Sohn, *Executive Director*, **American Association for Public Broadband**

Jack Lawrence, *CFO*, **Amperage Infrastructure Corporation**

Theodore Pietz, *President & CEO*, **Aquidneck Light**

Rob Sitterley, *President & CEO*, **AR-TX Regional Economic Development Inc.**

Paul Towle, *President & CEO*, **Aroostook Partnership**

Amy White-Tanabe, *President*, **Association of Colorado County Administrators (ACCA)**

Jess Ross, *Executive Director*, **Austin Free-Net**

Kevin Taglang, *Executive Editor*, **Benton Institute for Broadband & Society**

Michelle D. Monse, *President*, **Carl B. & Florence E. King Foundation**

Jay Uebel, *Broadband Program Manager*, **Carroll County Government - Maryland**

Dee Davis, *President*, **Center for Rural Strategies**

Sara Post Meyer, *Mayor*, **City of Cuero**

Larry Didway, *Superintendent*, **Clackamas Education Service District**

Kim Alexander, *CEO*, **Collegiate Edu-Nation**

Rachael McClain, *President*, **Collegiate Edu-Nation**

Nell Geiser, *Director of Research*, **Communications Workers of America**

Meagan Harris, *Rural Grants Manager*, **Community Foundation of Abilene**

Kami Griffiths, *Executive Director/Co-founder*, **Community Tech Network**

Jordana Barton-Garcia, *Senior Fellow-Connect Humanity*, **Connect Humanity**

Ryan D. Pelletier, *County Administrator*, **County of Aroostook**

Jennifer Wakeman, *Executive Director*, **DRIVE**

Jeff Shroll, *County Manager*, **Eagle County Government**

F. X. Flinn, *Chair*, **ECFiber**

Eric Ban, *Executive Director*, **Economic Mobility Systems**

Kellie Wilks, *CTO*, **Ector County ISD**

Brett Alessi, *Partner*, **Empower Schools**

Miguel Perez, *Director of Technology*, **Fabens ISD**

Roy Davis, *Assistant Librarian/Grant Manager*, **Fannie Brown Booth Memorial Library**

Michael Hardrick, *Library Director*, **Forest Hill Library District**

Nelda Barrera, *Client service manager*, **GrantWorks**

Frank Marley, *VP Govt Affairs*, **Indigenous Broadband Solutions, LLC**

Mike Kennedy, *President & CEO*, **Intermax Networks**

Eddie Hopkins, *Executive Director*, **Jasper Economic Development Corporation**

Joseph Caesar, *Executive Director*, **Legacy Institute for Financial Education**

Michelle Carroll Smith, *Superintendent*, **Lytle ISD**

Marci Roberts, *President*, **Marathon Primary Care Services, Inc**

Tracy Rosenberg, *Executive Director*, **Media Alliance**

Quinn Jordan, *Executive*, **Mississippi Broadband Association**

Robert Clark, *Executive Director*, **Northern Maine Development Commission**

Amy Sample Ward, *CEO*, **NTEN**

Alan Fitzpatrick, *CEO*, **Open Broadband, LLC**

Arthur S. Gaylord, *Past President and Chair Emeritus*, **OpenCape, OpenCape Inc.**

Paul Donovan, *Principal*, **PMD RE Consulting Services, LLC**

Dianne Connery, *Director*, **Pottsboro Area Public Library**

Rebecca Anderson, *Library Director*, **Riter C. Hulsey Public Library (City of Terrell)**

Charles E Thomas, *Chief Strategy Officer*, **Rural Broadband Partner, LLC.**

Celeste Rainey, *Library Director*, **San Augustine Public Library**

Colby Hall, *Executive Director*, **Shaping Our Appalachian Region**

Stephen Stewart, *CEO*, **Smart Broadband Inc**

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Edward Rogers, *Deputy Speaker Pro tempore*, **Texas Silver-Haired Legislature**

Tim Millerick, *Executive Director*, **Texoma Behavioral Health Leadership Team**

William Moore, *Principal*, **The Strategy Group**

Ashley R. Harris, *Director of Public Policy*, **United Ways of Texas**

Peggy O'Brien, *Local Governments Manager*, **Upper Rio Grande Regional Working Group**

Lee Davenport, *Director*, **US Ignite**

Matthew Lawrence LeFleur, *Equity Community Advisory/Advocate Member*, **Vermont Legends of Cities And Towns Equity**

Matt Larsen, *CEO*, **Vistabeam**

James Booth, *President*, **Washington County OH Board of Commissioners**

TJ Hand, *Director of Information Technology*, **We Connect Communications, Inc.**

Greg Metzger, *CEO*, **Yellowstone Fiber**

cc: Commissioner Brendan Carr
Commissioner Geoffrey Starks
Commissioner Nathan Simington
Commissioner Anna Gomez
Trent Harkrader, WCB
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Senator Maria Cantwell
Senator Ted Cruz
Senator Ben Ray Lujan
Senator John Thune

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