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Date: July 18, 2014

Re: **Broadband Funding Opportunity for Utilities, Localities, and Other Non-Traditional Providers Under Newly-Created FCC Rural Broadband Experiment Program**

This memorandum represents our analysis of the FCC's newly-created Rural Broadband Experiments program, which represents a broadband funding opportunity for non-traditional providers of broadband services, including public utilities, electric coops, local and tribal government, non-profits, and competitive service providers.

This memorandum describes the background to the new program and then analyzes the FCC order released on July 14, 2014 to provide guidance to potential applicants with regard to:

- Strategic considerations

- In-depth description of the funding opportunity

- Preliminary guidance on application planning process

Background
On July 14, 2014, the FCC released an order[1] that launches a new initiative to support rural broadband. The Rural Broadband Experiments will seek to explore how robust broadband can be expanded at lower cost in rural America. Up to $100 million will be available for the experiments, divided into three groups:

- $75 million to test construction of networks offering service plans providing 25 Mbps downloads and 5 Mbps uploads for the same or lower amounts of support than will be offered to carriers in the Phase II program of the Connect America Fund

- $15 million to test interest in delivering service at 10/1 speeds in high-cost areas

- $10 million for 10/1 service in areas that are extremely costly to serve

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[1] The full order is available at http://www.fcc.gov/document/rural-broadband-experiments-order.

The program will require applicants to compete nationwide for the funds, which will be awarded to projects that are the most cost effective and *serve locations only in price cap territories*. The FCC expects these experiments to provide critical information regarding which and what types of parties are willing to build networks that will deliver services that exceed its current performance standards for the Connect America Fund (CAF) for an amount of money equal to or less than the support amounts calculated by the adopted Phase II Connect America Cost Model.

Strategic Considerations

The FCC's rural-broadband experiments initiative is good opportunity for clients previously shut out of the initial round of funding from the CAF for price cap territories. Clients interested in applying will need to make a decision quickly. **Applications are due 90 days from the release of the order on July 14, 2014.** Given the limited amount of funding, it is likely that the vast majority of projects will not be funded. However, there a several key reasons that interested parties should strongly considering applying.

First, the FCC makes clear that the experiments will provide useful data from submitted formal proposals to inform the implementation of the Connect America Phase II competitive bidding mechanism or further reforms for rate-of-return carriers. Though the experiments program will not delay implementation of Phase II in the coming months, it will help inform the Commission's judgments as they address important policy issues including: how to implement a Phase II competitive bidding mechanism; how the CAF will address the challenges of providing service to the most remote, difficult to serve areas; and, other proposals set forth in the Connect America Fund FNPRM. In particular, one of the Commission's primary objectives for these experiments is to learn how to structure a competitive bidding process for recurring support.

As a result, even if your application does not win, it will provide an opportunity to help set the new parameters of CAF Phase II support as well as potentially shape future CAF support for rural broadband. The more realistic and complete picture the FCC gathers from the rural broadband experiment applicants of various costs, models, and technologies to serve high-cost rural areas, the better the design of CAF Phase II will be, and the more likely it will be that the FCC will implement further reforms to open up the program to more service providers. In addition, bids are confidential for the program, thus providing a good forum to share potentially sensitive data with the FCC.

Relatedly, given the implementation of CAF Phase II funding in the coming months, a similar, but much larger pot of money ($1.8 billion) will become available after the awarding of funds from the rural broadband experiments program. Given that the experiments are expected to inform Phase II competitive bidding, the application and selection process may likely be the same or similar. Providers who have already put

together applications for the rural broadband experiments will be well prepared to submit an application for Phase II funding.

Finally, and perhaps most importantly, any area funded through the rural broadband experiments will be excluded from the Phase II competitive bidding process in order to not provide duplicative support in a given area. Once winning bidders are identified, the FCC will remove the relevant census blocks from the list of eligible census blocks.

Description of the Funding Opportunity

Structure and Goals

The total budget for rural broadband experiments in price cap territories is $100 million. It will be divided into three separate categories:

- $75 million for projects meeting very high performance standards

- $15 million for projects meeting specified minimum performance standards that exceed the FCC's current CAF broadband standards

- $10 million for projects dedicated to serving extremely high-cost locations

The experiments seek to fund scalable broadband networks to residential and small business locations in rural communities that are *not* served by an unsubsidized competitor that offers voice and Internet access delivering at least 3 Mbps downstream/768 kbps upstream. Eligible projects are limited to areas within the existing territory of a price cap carrier as designated by the FCC. Projects attempting to serve locations within the territory of an existing rate-of-return carrier are not eligible for support.

The program will also support projects seeking 10 years of recurring support only, rather than proposals for projects seeking one-time support. All recipients of recurring experiment funding will receive support in 120 equal monthly disbursements over a 10-year support term, consistent with the support term adopted for the Phase II competitive bidding process.

Minimum Eligibility Requirements

- **Eligible Project Areas**: The program will accept applications only in *price cap areas* at *both the census tract level and the census block level*. The FCC is waiving the typical requirement for CAF support to file proposals at the census tract level. Though it is not required, parties are still permitted to submit cost-effective proposals that would encompass all of the eligible census blocks within a tract. In addition, proposals must be for census blocks with a cost per location exceeding the CAF Phase II funding threshold ($52.50 per location), but below the extremely high-cost threshold ($207.81 per location), and again not served by an

unsubsidized competitor offering voice service and Internet access providing 3 Mbps downstream/768 kbps upstream. There is an initial map of these locations available at: http://www.fcc.gov/maps/fcc-connect-america-fund-phase-ii-initial-eligible-areas-map. The Wireline Bureau is also expected to release the amount of support determined by the CAF Phase II model for each block, as well as a list of extremely high-cost census blocks and Tribal census blocks eligible for the rural broadband experiments and the number of locations in each of those blocks, within 15 days of July 14, 2014.

Applicants are further required to commit to serving the total number of locations in a given census block, even if only a portion of those locations are eligible for funding. For example, if a census block has 100 total locations, with 50 of those locations eligible for funding, a project must serve all 100 locations. The support amount for each location will be determined by the cost model that covers only those 50 eligible locations. Applicants may also choose to include additional locations in adjacent census blocks where the average cost per location exceeds the extremely high-cost threshold ($207.81 per location) if they determine that it is economically feasible to do so with the support they are requesting for the eligible census block. For instance, if $5,000 in Phase II support is available for a particular high-cost census block with 50 eligible locations, while an adjacent extremely high-cost census block contains seven extremely high-cost locations. If five of those locations are physically adjacent to the eligible census block, an applicant could bid $5,000 and commit to serve the 55 locations.

Finally, the program prohibits any winners from building in the portion of the census block that is served by a rate-of-return incumbent. The experiment funding is only to be used in price cap territories. However, areas currently served by competitive eligible telecommunications carriers (ETCs) will be eligible for support in the rural broadband experiments, including competitive affiliates of rate-of-return carriers operating out of region in price cap territories.

- **Applicant Eligibility:** Applicants do not need to be eligible telecommunications carriers (ETC) at the time they initially submit their formal proposals for funding through the rural broadband experiments, but *must obtain ETC designation* after being identified as winning bidders for the funding award. Winning bidders are required to confirm their ETC within 90 days of the public notice announcing the projects selected to receive funding. Any winning bidder that fails to notify the Bureau that it has obtained ETC designation within 90 days will be considered in default and will not be eligible to receive funding for its proposed rural broadband experiment.

A temporary waiver of the deadline is available if a winning bidder is able to demonstrate that it has engaged in good faith to obtain ETC designation, but has not received approval within the 90-day timeframe. If after 90 days a state has failed to act

on a pending ETC application, winning bidders may request the FCC to designate it as an ETC pursuant to section 214(e)(6).

Service Requirements

The experiments seeks to test on a limited scale the use of a competitive bidding process to award support to provide robust broadband to serve fixed locations using both wireline and wireless technologies. Recipients of funding in the rural broadband experiments are required to offer, at a minimum, at least one standalone broadband service plan more robust than the Commission's current standard of 4 Mbps downstream/1 Mbps upstream to all locations within the selected census blocks, with a specific amount of usage (expect that usage would be available in both peak and non-peak hours) at a price no higher than the reasonable comparability benchmarks for voice service ($46.96) and broadband service, and that meets defined quality standards. Participants are free to offer bundled service offerings in addition to the required standalone offerings.

- **Very high performance standards** ($75 million): Projects must propose to offer services capable of delivering 100 Mbps downstream/25 Mbps upstream, while offering at least one service plan that provides 25 Mbps downstream/5 Mbps upstream to all locations within the selected census blocks. Recipients must provide usage and pricing that is reasonably comparable to usage and pricing available for comparable wireline offerings (i.e., those with similar speeds) in urban areas, and latency no greater than 100 milliseconds (ms).

- **Minimum performance standards** ($15 million): Projects must propose to offer services that provide 10 Mbps downstream/1 Mbps upstream to all locations within the selected census blocks. This service plan also must offer at least a 100 GB usage allowance, no more than 100 ms of latency, and meet the reasonable comparability benchmarks for the pricing of voice and broadband. For purposes of the rural broadband experiments, an entity can charge no more than $85 for fixed broadband service for 10 Mbps downstream/1 Mbps upstream service, pending adoption of a final benchmark. The Wireline Bureau expects to adopt the reasonable comparability benchmark for fixed broadband services in the coming months.

- **Extremely high-cost locations** ($10 million): Projects must propose to offer services delivering 10 Mbps downstream/1 Mbps upstream, with 100 GB of usage and a price that meets our reasonable comparability benchmarks. Projects seeking funding in this category *must propose to serve all the locations within the extremely high-cost block or blocks on which the applicant bids*. These projects also must propose to serve only extremely high-cost census blocks; a project will not become eligible for this category if it proposes to serve one extremely high-cost census block as part of a larger project to serve other eligible census blocks.

Finally, for purposes of the rural broadband experiments, only census blocks where all price cap locations are extremely high-cost will be eligible.

Selection Methodology and Bidding Process

Recipients will be selected based on objective measures of **cost-effectiveness.** For applications proposing to serve census blocks identified by the Connect America Cost Model (hereinafter "model") as eligible for Phase II support, the requested amounts will be compared to existing model-based support amounts. For applications proposing to serve only census blocks the model identifies as "extremely high-cost," for which there is no model-determined level of support, applications will be selected based upon the lowest-cost per location.

Applications will be ranked in each category on the basis of cost-effectiveness and awards made until the funding in each category is exhausted. No census block will receive support from more than one proposal. Once a proposal has been selected, any other proposals that would cover any of the census blocks in the selected proposals will no longer be eligible. If two or more applications result in identical rankings of cost-effectiveness and there are not sufficient funds to support both projects, the project that proposes to serve the most locations will be selected. If more than one tied proposal includes the same census block, the project that proposes to serve the most locations will be selected. In the unlikely event that tied and overlapping proposals serve the identical number of locations, the supported project will be selected randomly.

Applicants may choose to submit multiple proposals in the same category, as well as different proposals in multiple categories. However, in determining who is the winning bidder for funding in each category, proposals will only be compared to proposals in the same category, *i.e.*, a proposal to serve census blocks with "very high performance" service will only be compared against other proposals in that category. Proposals that do not meet the criteria for selection in one category will not be automatically considered in another group. For example, if an entity proposes to serve certain census blocks with "very high performance service," but is not a winning bidder for funding in that category, that project will not be considered for funding in the "minimum performance" category unless the applicant has also applied in that category, even if it might be a winning bidder for that category.

- **"Very high performance" and "minimum performance standard" categories:** Cost-effectiveness is defined as requested dollars per location divided by the current model-based support per location for applications in the "very high performance standards" and "minimum performance standards" categories. Cost-effectiveness will be evaluated in comparison to the model by calculating the ratio of requested support per location to model-based support per location in the census blocks the applicant proposes to serve. Applicants that commit to serve locations in extremely high-cost census blocks (which receive no model-

based support) can add these locations to the calculation of their requested support per location for the project. The effect of including these extremely high-cost locations would be to lower the support per location of the project and improve the overall cost-effectiveness.

The evaluation of cost-effectiveness will involve the following steps:

1. Divide the total amount of support requested for each proposal by ten to compare proposals to annual model-based support amounts.

2. Calculate each proposal's requested support per location and divide that number by the model-based support per location.

3. Using these ratios, rank the proposals from the lowest to highest in each category where the lowest ratio indicates the greatest cost-effectiveness.

4. Select those projects with the lowest ratio within the $75 million budget for the first category of projects, and within the $15 million budget for the second category of projects.

- **Extremely high-cost:** Proposals in this category will be evaluated by calculating the cost per location and ranking applications on a dollar requested per location basis, from lowest to highest. Projects based on the lowest cost per location will be selected, until the budget for the category is exhausted. Applicants that submit proposals for both the "very high performance" and "minimum performance standard" categories may identify their proposal as contingent on winning the bid in one of the other categories. In that case, if an applicant that would otherwise be selected based on its cost-effectiveness score fails to win in one of the other categories, it would not win; instead, the next most cost-effective proposal in the category would be selected.

- **Tribal Bidding Credit:** There is a bidding credit for entities that propose projects that will serve only Tribal census blocks, which will have the effect of making such projects more cost-effective relative to proposals from other applicants. The credit will effectively reduce the bid amount of qualifying experiments by 25 percent for the purpose of comparing it to other bids, thus increasing the likelihood that experiments serving Tribal blocks will receive funding. This credit will be available only to eligible census blocks located within the geographic area defined by the boundaries of the Tribal land. The Wireline Bureau will release the list of census blocks that will be eligible for this credit in the rural broadband experiments within 15 days of the release of the Experiments order on July14, 2014.

- **Funding Limits:** To preclude one entity or one project from exhausting the entire budget, there are limits on the amount of funding that each project and each

entity can receive. There is a $20 million per project limit for those projects submitted to the "very high performance standards" category, a limit of $7.5 million per project for those projects submitted to the "minimum performance standards" category, and a limit of $5 million per project for those projects submitted to the "extremely high-cost" areas category. There is also a limit of $20 million per entity, including its affiliates. Each entity and its affiliates will be precluded from being awarded more than $20 million in support across all three experiment categories, including situations where an entity is in more than one consortium.

- **Bidding Process:** As part of the formal application, entities will be required to submit *confidential bids* requesting a certain amount of support to serve specified census blocks. Additionally, entities will be required to:

    1. Provide information regarding any agreements or joint bidding arrangements

    2. Disclose any ownership interests in or by Commission-regulated companies

    3. Declare whether their project will serve only Tribal census blocks

    4. Submit a proposal containing basic information that would be informative to the general public and will be released publicly only if they win support

    5. Certify that they meet certain threshold requirements, including being in compliance with all the statutory and regulatory requirements and being financially and technically capable of meeting the required public interest obligations in each area they seek support.

Post-Selection Review
The Wireline Bureau will issue a public notice identifying the winning bidders that may be authorized to receive support and the list of census blocks included in their proposed projects, which are presumptively unserved by an unsubsidized competitor. The Bureau will then conduct a challenge process similar to the process it used for determining eligible areas for model-based support. To the extent that a challenge is granted in whole or in part, funding for those locations will be adjusted proportionately.

- **Technical and Financial Review:** The Bureau will determine whether each selected applicant has demonstrated that it has the technical and financial qualifications to successfully complete the proposed project within the required timeframes and is in compliance with all statutory and regulatory requirements for the universal service support that the applicant seeks.

    Within 10 business days of public notice of winning bidders, winners will be required to:

1. Provide the most recent three consecutive years of audited financial statements, including balance sheets, net income, and cash flow.

2. Submit a description of the technology and system design used to deliver voice and broadband service, including a network diagram, which must be certified by a professional engineer. Winning bidders proposing to use wireless technologies also must provide a description of spectrum access in the areas for which the applicant seeks support.

- **Letter of Credit and ETC Designation:** Within 60 days of public notice of winning bidders, winning bidders will be required to submit a letter from an acceptable bank committing to issue an irrevocable stand-by original letter of credit (LOC) to that entity. Finally, each selected applicant is required to provide within 90 days of public notice of winning bidders appropriate documentation of its ETC designation in all the areas for which it will receive support. Once the Bureau has determined that the entity is financially and technically qualified and the LOC commitment letter is sufficient, it will release a public notice stating that the entity is ready to be authorized for support. Within 10 business days of this public notice, the winning bidder will be required to submit an irrevocable stand-by original LOC that has been issued and signed by the issuing bank along with an opinion letter from legal counsel. Once the Universal Service Administrative Company (USAC) has verified the sufficiency of the LOC and the opinion letter, the Bureau will issue a public notice authorizing the entity to receive its first disbursement.

Build-Out Requirements

The support term will begin with the first disbursement of support after the entities have been notified that they are the winning bidders and that they have met the requirements outlined above. During this support term, the recipients will be required to meet interim build-out requirements consistent with the build-out requirements adopted generally for recipients of Connect America Phase II funding. By the end of the third year, the recipients must offer service meeting the public service obligations adopted for the relevant experiment category to at least 85 percent of the number of required locations and submit the required certifications and evidence. By the end of the fifth year, the recipients must offer service meeting the public service obligations adopted for the relevant experiment category to 100 percent of the number of required locations and submit the required certifications and evidence. Recipients must comply with the terms and conditions of rural broadband experiment support for the full 10-year support term.

Preliminary guidance on the application planning process

Given that the applications are due 90 days from the release of the order on July 14, 2014, we believe quick action is warranted for clients who want to explore the opportunity. We recommend that you take affirmative steps to begin the necessary analysis, build the necessary partnerships, and develop the preliminary documents necessary for an application. Also, we recommend you review the initial map of eligible locations available at: http://www.fcc.gov/maps/fcc-connect-america-fund-phase-ii-initial-eligible-areas-map. The experiments program is very specific about what locations are eligible.

In addition, particularly for those public or quasi-public entities, we advise you seek preliminary legal guidance as to any structural barriers that may exist in your community or state. Related, any non-ETCs should immediately look into the necessary requirements for attaining such status, since it is required for all winning bidders.

In terms of the application itself, there are a few things to consider as part of the planning process. First, applicants are required to commit to serving the total number of locations in a given census block, even if only a portion of those locations are eligible for funding. Thus, if a census block has 100 total locations, with 50 of those locations eligible for funding, a project must serve all 100 locations. Additionally, the support amount for each location will be determined by the cost model that covers only those 50 eligible locations.

Second, the program provides an incentive to structure projects that will cover some extremely high-cost locations as part of a proposal to serve other eligible census blocks. Applicants that can economically, feasibly serve locations in extremely high-cost areas with the support they are requesting for a nearby eligible census block, can add these locations to the calculation of their requested support per location for the project and lower the support per location of the project. Thus, if there are extremely high-cost locations very nearby to locations within eligible census blocks you're interested in serving as part of a "very high performance" or "minimum performance" category application, adding them to the project could give a boost to the cost-effectiveness of a proposal (depending upon how costly it will be to serve those extremely high-cost locations).

Finally it's worth noting again, that proposals that do not meet the criteria for selection in one category *will not* be automatically considered in another category; even if it might be a winning bidder in one of those categories. As a consequence, depending on the locations you're seeking to serve and at what speeds, you may consider putting in applications in two or more categories to preserve your chances of potentially winning in another category.

Please feel free to contact us if you have any questions or concerns.