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Rural Digital Opportunity Fund: Requirements and Selected Policy Issues

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Rural Digital Opportunity Fund: Requirements and Selected Policy Issues

Broadband internet has become increasingly important in the 21st century, as more and more aspects of everyday life, such as job applications and homework assignments, require the use of digital technologies. Providing increased broadband access has been an ongoing challenge, as some of the United States—particularly rural areas—have limited or no access to broadband. The gap between those who have access to broadband and those who do not is referred to as the digital divide. During the Coronavirus Disease 2019 (COVID-19) pandemic, many federal, local, and state governments, in addition to large and small businesses, implemented remote working or distance learning options to help abate the spread of the virus while allowing employees to continue to work. However, COVID-19 mitigation efforts further revealed discrepancies in broadband availability and accessibility across the United States.

The Universal Service Fund (USF) programs under the Federal Communications Commission (FCC) are a primary source of funds for broadband infrastructure and adoption. According to the FCC’s 2020 *Broadband Deployment Report*, “we find for the third consecutive year that advanced telecommunications capability is being deployed on a reasonable and timely basis. Despite this finding, our work to close the digital divide is not complete. The Commission will continue its efforts to ensure that all Americans have the ability to access broadband.”

One of the programs initiated by the FCC under the USF is the Rural Digital Opportunity Fund (RDOF), the FCC’s next step in addressing the digital divide. Building upon the model used by the FCC in a previous auction related to broadband, the FCC plans to commit \$20.4 billion of these funds to bring high-speed fixed broadband service to rural homes and small businesses in two phases. Phase I proposes to allocate up to \$16 billion to areas that are completely unserved by broadband with a minimum download rate of at least 25 megabits per second (Mbps) and an upload rate of 3 Mbps, as determined by the FCC’s current broadband data. Phase II proposes to allocate an estimated \$4.4 billion to areas partially served by broadband with 25/3 Mbps speed. The FCC plans to identify the Phase II areas by using data from the FCC’s forthcoming Digital Opportunity Data Collection, which is to collect more granular data to improve the FCC’s current broadband map, as required under the Broadband Deployment Accuracy and Technological Availability Act (P.L. 116-130). The auction for Phase I (Auction 904) is scheduled for October 29, 2020. There are a number of potential policy issues Congress may choose to consider:

- acceleration of the RDOF timeline to get broadband infrastructure built and deployed more quickly,
- deceleration of the RDOF timeline due to COVID-19 pandemic,
- whether or not to wait for the creation of a broadband map with more accurate data before moving forward with Phase I of RDOF,
- exclusion of areas from RDOF eligibility if a service provider is committed to building out 25/3 Mbps in a census block using subsidies from similar state or federal broadband programs, and
- removal of Eligible Telecommunications Carrier status as a requirement to receive RDOF subsidies.

Congress may hold oversight hearings or enact additional legislation to help ensure the RDOF successfully targets and deploys broadband to areas that would otherwise remain unserved. Bills addressing the Rural Digital Opportunity Fund have been introduced in the 116th Congress, including the Health and Economic Recovery Omnibus Emergency Solutions Act (H.R. 6800); Rural Broadband Acceleration Act (H.R. 7022); the Expanding Opportunities for Broadband Deployment Act (H.R. 7160); and S. 4201, “a bill to direct the Federal Communications Commission to take certain actions to accelerate the Rural Digital Opportunity Fund Phase I auction, and for other purposes.”

Contents

Introduction	1
Rural Digital Opportunity Fund	1
Phase I: Timeline.....	2
Phase I: Eligible Areas and Providers	2
Phase I: Auction 904 Filing Requirements and Other Procedures	3
Phase I: Deployment Milestones.....	4
Selected Policy Issues	4
Granularity of Broadband Mapping Data for Phase I	5
Acceleration of Auction Timeline	6
Deceleration of Auction Timeline	6
Nexus to State and Federal Broadband Subsidy Programs	7
Eligible Telecommunications Carrier (ETC) Status.....	8
Options for Congress.....	9
Conduct Oversight	9
Enact Legislation.....	10
Concluding Observations	10

Tables

Table 1. Rural Digital Opportunity Fund (RDOF) Phase I Timeline	2
---	---

Contacts

Author Information.....	10
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Introduction

Broadband access is an issue of sustained congressional interest. The importance of broadband availability and affordability for telework, telehealth, and remote learning has received increased attention due to effects of the Coronavirus Disease 2019 (COVID-19) pandemic. Many policymakers are concerned about the gap between those with and those without access to information and telecommunication technologies—referred to by some as the digital divide. Several factors contribute to the lack of broadband access, including difficult terrain, lack of population density, socioeconomics, and market factors.¹ Congress continues to make addressing the digital divide a legislative priority, through avenues such as subsidies for federal broadband programs and oversight of federal agencies to monitor progress of the programs.

Congress regularly conducts oversight of, and directs through legislation, the Federal Communications Commission (FCC), seen by many as the key federal agency for addressing the digital divide. The FCC gains its authority to address the digital divide through provisions contained in the 1934 Telecommunications Act, as amended (P.L. 73-416). The FCC regulates interstate and international communications by radio, television, wire, satellite, and cable.² Many federal broadband programs are housed within the FCC, including the Universal Service Programs, which focus on increased access to high-speed internet for low-income consumers and those in underserved areas, as well as underserved schools, libraries, and health care facilities.³ A new FCC broadband program aimed at bridging the digital divide is the Rural Digital Opportunity Fund (RDOF). This report discusses program requirements under the RDOF, as well as policy considerations and options for the two phases of the program. The FCC’s current focus is on the Phase I of RDOF; there is limited information on how the FCC plans to conduct Phase II. Therefore, the focus of this report is on the first phase.

Rural Digital Opportunity Fund

On January 30, 2020, the FCC announced the launch of the RDOF. Through it, the FCC plans to commit \$20.4 billion to bring high-speed fixed broadband (i.e., non-mobile and delivered through a stationary connection) service to rural homes and small businesses in two phases.⁴ During Phase I, the FCC plans to allocate an estimated \$16 billion through an auction (referred to as Auction 904) to internet service providers to deploy broadband in areas that are completely unserved by broadband with a minimum download rate of at least 25 megabits per second (Mbps) and an upload rate of 3 Mbps according to currently available data on service quality. Auction 904 is to include competitive bidding in a multiple-round, reverse auction, in which the FCC plans to weigh performance tiers and latency,⁵ and assign funding support in each round to the bidder with the lowest weight. During Phase II, the FCC plans to allocate an estimated \$4.4 billion to areas partially served with 25/3 Mbps, as well as areas from Phase I that did not receive bids. The FCC

¹ Monica Anderson, “About a Quarter of Rural Americans Say Access to High-Speed Internet Is a Major Problem,” Pew Research Center, September 10, 2018, <https://www.pewresearch.org/fact-tank/2018/09/10/about-a-quarter-of-rural-americans-say-access-to-high-speed-internet-is-a-major-problem/>.

² Federal Communications Commission, “What We Do,” <https://www.fcc.gov/about-fcc/what-we-do>.

³ Federal Communications Commission, “Universal Service,” <https://www.fcc.gov/general/universal-service>.

⁴ Federal Communications Commission, *Auction 904: Rural Digital Opportunity Fund*, Summary, <https://www.fcc.gov/auction/904>.

⁵ Latency refers to a delay between when an action is taken (e.g., a Google search) and when the result is shown—high latency is when it takes longer to see the results.

plans to use data from the FCC’s forthcoming Digital Opportunity Data Collection, which is to collect more granular data to improve the FCC’s current broadband map, as required under the Broadband Deployment Accuracy and Technological Availability Act (P.L. 116-130).⁶

Phase I: Timeline

The FCC has proposed the timeline shown in **Table 1** for Phase I of the RDOF. As noted, some dates for Phase I have yet to be announced by the FCC.

Table 1. Rural Digital Opportunity Fund (RDOF) Phase I Timeline

RDOF Action	Deadline
Adopt auction procedures	June 9, 2020 (completed)
Announce final eligible areas	No later than 3 weeks prior to October 29, 2020
Short-form applications due	July 15, 2020 (completed)
Auction bidding	October 29, 2020
Announce winning bidders	To be determined
Long-form applications due	To be determined
Authorize funding	To be determined

Source: CRS using Federal Communications Commission, *Notice and Filing Requirements and Other Procedures for Auction 904*, June 11, 2020, pp. 5-6, <https://docs.fcc.gov/public/attachments/FCC-20-77A1.pdf>.

Phase I: Eligible Areas and Providers

Funding support will be provided in census blocks.⁷ Census blocks excluded from RDOF eligibility include those with terrestrial providers that offer broadband service of at least 25/3 Mbps, and those that have received funding from the U.S. Department of Agriculture ReConnect program⁸ or similar federal or state broadband subsidy programs to provide 25/3 Mbps or better service.⁹ On March 17, 2020, the FCC released a summary of initial eligible areas by state.¹⁰ The FCC established a challenge process whereby parties could identify areas that have received service since submitting data through the most recent FCC Form 477, which collects information about broadband connections to end-user locations; or identify areas that have been awarded funding through federal or state broadband subsidy programs to provide 25/3 Mbps or better

⁶ The Broadband Data Act did not specify a certain date for when the new maps would be required to go into effect; Section 802 of the law did require the FCC to issue a final rule, as well as reform the current Form 477 broadband deployment service availability collection process by September 21, 2020.

⁷ Census blocks are “statistical areas bounded by visible features, such as streets, roads, streams, and railroad tracks, and by nonvisible boundaries, such as selected property lines and city, township, school district, and county limits and short line-of-sight extensions of streets and roads.” For more information, see United States Census Bureau, *2010 Census Summary File 1 2010 Census of Population and Housing*, Technical Documentation, September 2012, p. 614, <https://www.census.gov/prod/cen2010/doc/sf1.pdf>.

⁸ For more on the ReConnect program, please see CRS In Focus IF11262, *USDA’s ReConnect Broadband Pilot Program*, by Alyssa R. Casey.

⁹ Federal Communications Commission, *In the Matter of Rural Digital Opportunity Fund*, Report and Order, January 30, 2020, p. 7, <https://docs.fcc.gov/public/attachments/FCC-20-5A1.pdf>.

¹⁰ Federal Communications Commission, *Auction 904: Rural Digital Opportunity Fund*, Summary, <https://www.fcc.gov/auction/904>.

service.¹¹ A limited challenge process was conducted by the FCC in April 2020 and on June 25, 2020, an updated list of census blocks and a map of areas¹² deemed initially eligible for the RDOF Phase I auction was released.¹³

Additionally, a provider must be deemed an eligible telecommunications carrier (ETC) in order to receive funding support for RDOF. Section 214(e) of the Communications Act of 1934, as amended, stipulates that ETCs shall be eligible to receive specific federal universal service support. Section 214(e)(2) gives states the primary responsibility for ETC designation.¹⁴ Entities can wait until after they are announced as winning bidders to obtain eligible telecommunication carrier designations.¹⁵

Phase I: Auction 904 Filing Requirements and Other Procedures

The Phase I auction (referred to as Auction 904), is scheduled to begin on October 29, 2020. The FCC plans to model Auction 904 after the Connect America Phase II auction (referred to as Auction 903), which ran from July 24, 2018, to August 21, 2018. In Auction 903, 103 bidders won \$1.49 billion over 10 years to provide fixed broadband and voice services to over 700,000 locations (e.g., housing units and small businesses) in 45 states.¹⁶

Bids for Auction 904 are to be accepted for four performance tiers, each with varying speed and usage allowances, and either high or low latency. The support amount that a winning bidder receives is based on proposed performance tier and latency, which the FCC scores with multiple weighted factors. For example, the FCC designated a “minimum” speed as 25/3 Mbps with a weight of 50 and an “above baseline” speed as 100/20 Mbps with a weight of 20.¹⁷ The FCC plans to prioritize bids with lower tier and latency weights.

Short-form applications are required by the FCC to ensure that potential bidders have the business experience and financial means to participate, and intend to use a network technology that will allow them to meet performance requirements. Post-auction, the FCC plans to require long-form applications from winning bidders to demonstrate that they have the technical and financial ability to deploy their planned broadband networks in areas where they win support. Once a long form application is approved, and ETC designation is established, the applicant is to be authorized to begin receiving support.

¹¹ Federal Communications Commission, *In the Matter of Rural Digital Opportunity Fund*, Report and Order, January 30, 2020, p. 85, <https://docs.fcc.gov/public/attachments/FCC-20-5A1.pdf>.

¹² Federal Communications Commission, *Auction 904 Updated Eligible Areas*, June 25, 2020, <https://www.fcc.gov/reports-research/maps/auction-904-updated-jun20-eligible-areas/>.

¹³ Federal Communications Commission, 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, June 25, 2020, <https://docs.fcc.gov/public/attachments/DA-20-665A1.pdf>.

¹⁴ 47 U.S.C. §214.

¹⁵ Federal Communications Commission, *Auction 904: Rural Digital Opportunity Fund*, fact sheet, <https://www.fcc.gov/auction/904/factsheet>.

¹⁶ Federal Communications Commission, *Connect America Fund Phase II Auction (Auction 903)*, <https://www.fcc.gov/auction/903>.

¹⁷ Federal Communications Commission, *Auction 904: Rural Digital Opportunity Fund*, fact sheet, <https://www.fcc.gov/auction/904/factsheet>.

Phase I: Deployment Milestones

After receiving support from the FCC, recipients must meet a number of deployment milestones during the 10-year support term. Each support recipient must offer at least one voice and one broadband service commercially¹⁸ that meets the relevant service requirements to the required number of locations as determined by the FCC. Additionally, the FCC plans to require compliance with the following timeframe for each recipient that is awarded support in a state:

- 40% of the required number of locations in a state¹⁹ by the end of the third year of support,
- 60% of the required number of locations in a state the end of the fourth year of support,
- 80% of the required number of locations in a state by the end of the fifth year of support, and
- by the end of the sixth year, revised location totals will be announced.

If there are fewer locations than originally estimated, support recipients must serve the revised number of locations by end of year six. If there are more locations than originally estimated, support recipients must serve the original number of locations by the end of year six and must serve the remainder of locations by the end of year eight.²⁰

Selected Policy Issues

As the FCC proceeds with implementation of RDOF, there are several unresolved policy issues. One of these issues includes allocating \$16 billion in Phase I before more granular broadband mapping data becomes available. During the COVID-19 pandemic, there has also been discussion in Congress around accelerating the auction date to help fast-track the build out of broadband infrastructure,²¹ as well advocacy from stakeholders to decelerate the timeline to accommodate COVID-19 disruptions.²²

Additionally, there are eligibility requirements that exclude providers that have received other support—such as through similar state or federal broadband subsidy programs—even though they may be best positioned to successfully serve an area.²³ There is also a debate among not-for-profit and advocacy groups, federal agency officials, and Congress about requiring providers have an ETC designation prior to being awarded RDOF funding.

¹⁸ All RDOF support recipients will be required to offer standalone voice service and offer voice and broadband services at rates that are reasonably comparable to rates offered in urban areas.

¹⁹ Number of locations will vary per state.

²⁰ Federal Communications Commission, *Auction 904: Rural Digital Opportunity Fund*, fact sheet, <https://www.fcc.gov/auction/904/factsheet>.

²¹ See H.R. 6800, H.R. 7022, and S. 4201.

²² Letter from Colorado Broadband Office to The Honorable Ajit Pai, April 24, 2020, [https://ecfsapi.fcc.gov/file/10424151299086/Ex%20Parte%20Tribal%20Window%20%26%20904%20Auction%20Extension%20Request%20\(1\).pdf](https://ecfsapi.fcc.gov/file/10424151299086/Ex%20Parte%20Tribal%20Window%20%26%20904%20Auction%20Extension%20Request%20(1).pdf).

²³ If a service provider has state-based or federal funding and a commitment to deploy 25/3 Mbps or better service in one area, it cannot receive FCC funding through RDOF to deliver similar service to that same area.

Granularity of Broadband Mapping Data for Phase I

The Broadband Data Improvement Act (P.L. 110-385), enacted on October 10, 2008, directed the Department of Commerce to establish a state broadband data and development grant program.²⁴ This data was used to establish the National Broadband Map, the first public, searchable, nationwide map of broadband availability, which was launched in 2011. The National Broadband Map was decommissioned on December 21, 2018, due to the age of the data. Broadband mapping then shifted to the FCC.²⁵ Some Members of the 116th Congress have questioned the accuracy and completeness of the data which are the basis of the FCC's map and called for the FCC to improve its broadband data collection and reporting initiative.²⁶ On August 1, 2019, the FCC adopted a Report and Order introducing a new process, called the Digital Opportunity Data Collection (DODC), for collecting fixed broadband data.²⁷

Multiple pieces of legislation related to broadband mapping legislation have been introduced in the 116th Congress²⁸ and on March 23, 2020, the Broadband Deployment Accuracy and Technological Availability Act (Broadband DATA Act, P.L. 116-130) became law. The Broadband DATA Act requires the FCC to create a common dataset of all locations in the United States where fixed broadband internet access service can be installed, establishes a challenge process to enable the submission of independent data challenging the accuracy of FCC broadband maps, and requires the use of these new maps by the FCC, the Rural Utilities Service within the United States Department of Agriculture, and the National Telecommunications and Information Administration under the Department of Commerce, when making federal funding awards for broadband.

For Phase II of RDOF, the FCC plans to use the new DODC when determining eligible census blocks for partially served areas; for Phase I, the FCC plans to use its current, less granular broadband map data to determine the wholly unserved areas eligible for auction. The FCC's January 30, 2020, Report and Order notes that the current tools and data are adequate to identify census blocks that are wholly unserved and that delaying the Phase I auction until more granular data is obtained would further disadvantage unserved citizens.²⁹ Upon adoption of new rules for the DODC on July 16, 2020, FCC Commissioner Brendan Carr stated:

On the bright side, our Form 477 data are good at identifying areas that are completely unserved. And that's why I am glad the FCC is moving ahead with Phase I of the Rural Digital Opportunity Fund, which can ensure that Americans living in those unserved areas need not wait any longer than necessary to receive high-speed service.³⁰

²⁴ Federal Communications Commission, *In the Matter of Rural Digital Opportunity Fund*, Report and Order, January 30, 2020, p. 7, <https://docs.fcc.gov/public/attachments/FCC-20-5A1.pdf>.

²⁵ Rich Mansfield, "Decommissioning of the National Broadband Map and Its APIs," FCC, December 7, 2018, <https://www.fcc.gov/news-events/blog/2018/12/07/decommissioning-national-broadband-map-and-its-apis>.

²⁶ Letter from Senators Shelley Moore Capito, Jerry Moran, Brian Schatz, and Jon Tester, to The Honorable Ajit Pai, Federal Communications Commission Chairman, July 11, 2019, https://www.testersenate.gov/files/Letters/071019_Letter%20to%20FCC%20on%20Broadband%20Mapping%20and%20Shapefiles.pdf.

²⁷ Federal Communications Commission, *In the Matter of Establishing the Digital Opportunity Data Collection*, Report and Order and Second Further Notice of Proposed Rulemaking, August 1, 2019, <https://docs.fcc.gov/public/attachments/FCC-19-79A1.pdf>.

²⁸ For more on broadband data and mapping, please see CRS Report R45962, *Broadband Data and Mapping: Background and Issues for the 116th Congress*, by Colby Leigh Rachfal.

²⁹ Federal Communications Commission, *In the Matter of Rural Digital Opportunity Fund*, Report and Order, January 30, 2020, pp. 5-6, <https://docs.fcc.gov/public/attachments/FCC-20-5A1.pdf>.

³⁰ Federal Communications Commission, *Statement of Commissioner Brendan Carr*, Re: Establishing the Digital

Nevertheless, some policymakers assert that moving forward with RDOF without waiting for the granular data to be gathered by the DODC is not the right approach. FCC Commissioner Jessica Rosenworcel claimed upon adoption of new DODC rules:

But there is one thing we surely get wrong. We are going to gather all of this precise data about where broadband is and is not, but we are not going to use any of it this fall when we distribute \$16 billion in funding for improved broadband service across the country.³¹

Although the Broadband DATA Act does not specify a certain date for when the new maps would be required to go into effect, Section 802 of the law requires the FCC to issue a final rule,³² as well as reform the current Form 477 broadband deployment service availability collection process by September 21, 2020.³³ In a July 16, 2020, statement, FCC Chairman Ajit Pai stated that funding from Congress is needed to implement requirements in the Broadband DATA Act.³⁴

Acceleration of Auction Timeline

The COVID-19 pandemic further reinforced the importance of broadband availability to all communities, including rural communities. The Rural Broadband Acceleration Act (H.R. 7022), introduced on May 27, 2020, contains provisions to partially speed up the deployment process for RDOF for providers that are willing to deploy symmetrical gigabit fiber networks (i.e., 1,000 Mbps download/1,000 Mbps upload).

Section 2 of the H.R. 7022 describes how the FCC would separately evaluate these applicants, and successful applicants would be awarded geographic areas by September 30, 2020, at 100% of the reserve price.³⁵ Those areas would then be removed from the October 2020 auction. In addition to deploying high speed networks, these successful applicants would be required to begin construction no later than six months following the award and make service available no later than one year following the award.³⁶

Deceleration of Auction Timeline

Some stakeholders have called for the RDOF auction timeline to be extended to accommodate the disruption of the COVID-19 pandemic. For example, the Colorado Broadband Office, within the

Opportunity Data Collection, <https://docs.fcc.gov/public/attachments/FCC-20-94A4.pdf>.

³¹ Federal Communications Commission, *Statement of Commissioner Jessica Rosenworcel*, Re: Establishing the Digital Opportunity Data Collection, <https://docs.fcc.gov/public/attachments/FCC-20-94A5.pdf>.

³² Federal Communications Commission, “Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program Final Rule,” 85 *Federal Register*, August 18, 2020, <https://www.govinfo.gov/content/pkg/FR-2020-08-18/pdf/2020-17633.pdf>.

³³ Federal Communications Commission, “Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program Proposed Rules,” 85 *Federal Register*, August 18, 2020, <https://www.govinfo.gov/content/pkg/FR-2020-08-18/pdf/2020-16356.pdf>.

³⁴ Federal Communications Commission, “Pai Statement: FCC Improves Broadband Data and Maps to Bridge the Digital Divide,” press release, July 16, 2020, <https://www.fcc.gov/document/fcc-improves-broadband-data-and-maps-bridge-digital-divide/pai-statement>.

³⁵ The FCC’s Connect America Cost Model (CAM), which is being utilized for RDOF, contains two modules. The first is a cost module that calculates costs for all areas of the country. The second is the support module, which calculates the RDOF financial support for each area based on those costs, or, in this case, the reserve price allocation. See footnote 66 in Federal Communications Commission, *In the Matter of Rural Digital Opportunity Fund*, Report and Order, January 30, 2020, p. 12, <https://docs.fcc.gov/public/attachments/FCC-20-5A1.pdf>.

³⁶ Congressman Fred Upton, *Rural Broadband Acceleration Act—H.R. 7022*, One Pager, p. 2, https://upton.house.gov/uploadedfiles/h.r._7022_rural_broadband_acceleration_act_one-pager.pdf.

governor's Office of Information Technology, filed a letter with the FCC asking to extend the then-established October 22, 2020, opening of the FCC's RDOF Auction 904 by 180 days. As stated in the letter:

The COVID-19 pandemic has demonstrated that the internet is critical infrastructure and having the ability to virtually conduct business, video conferences with medical professionals, and access online education has become essential for everyone, everywhere. Understanding that the COVID-19 pandemic has affected all aspects of our lives, our rural broadband providers and our tribal communities are exponentially impacted. Timelines considered reasonable pre-COVID-19 are simply unworkable as our rural communities attempt to respond to the pandemic.³⁷

The FCC extended the Auction 904 date by one week, from October 22, 2020, to October 29, 2020, stating that the pandemic demonstrates how essential it is that all Americans have access as soon as possible to high speed broadband to telework, attend online classes, communicate with family and friends, and obtain healthcare remotely.³⁸

Nexus to State and Federal Broadband Subsidy Programs

The FCC has adopted a policy that would identify and exclude from RDOF eligibility census blocks that have been awarded funding through other similar federal and state broadband subsidy programs. The FCC states the intent behind this policy is to ensure the auction does not award duplicative or unnecessary support, and instead targets RDOF funding in areas that would otherwise not be served by broadband.³⁹

In recent years, many states have developed and implemented their own broadband programs to help close the digital divide. According to the National Telecommunications and Information Administration's (NTIA) *BroadbandUSA*,⁴⁰ more than half the states have their own broadband subsidy program, which may lead many broadband service providers in those states to be ineligible for RDOF. On March 9, 2020, a letter citing concerns and follow-up questions was sent to FCC Chairman Pai from several Senators. Among the concerns raised was a belief that the FCC should incentivize states to take action and create their own broadband programs, not deter them by restricting eligibility for federal programs, such as RDOF.⁴¹ Chairman Pai responded with a letter on March 27, 2020, stating:

With regard to state programs, the Commission continues to support state efforts to connect more Americans to broadband and welcomes the opportunity to partner with states (as it has with states like New York) to align their funding streams with ours so as to stretch our

³⁷ Letter from Colorado Broadband Office to The Honorable Ajit Pai, April 24, 2020, [https://ecfsapi.fcc.gov/file/10424151299086/Ex%20Parte%20Tribal%20Window%20%26%20904%20Auction%20Extension%20Request%20\(1\).pdf](https://ecfsapi.fcc.gov/file/10424151299086/Ex%20Parte%20Tribal%20Window%20%26%20904%20Auction%20Extension%20Request%20(1).pdf).

³⁸ Federal Communications Commission, *Notice and Filing Requirements and Other Procedures for Auction 904*, Public Notice, June 11, 2020, p. 6, <https://docs.fcc.gov/public/attachments/FCC-20-77A1.pdf>.

³⁹ Federal Communications Commission, *In the Matter of Rural Digital Opportunity Fund*, Report and Order, January 30, 2020, p. 8, <https://docs.fcc.gov/public/attachments/FCC-20-5A1.pdf>.

⁴⁰ National Telecommunications and Information Administration, *BroadbandUSA*, <https://broadbandusa.ntia.doc.gov/>.

⁴¹ Letter from Senators Charles E. Schumer, Tammy Duckworth, Tom Udall, Richard J. Durbin, Angus S. King, Jr., Mazie Hirono, Kirsten Gillibrand, Cory Gardner, Ron Wyden, Edward J. Markey, Amy Klobuchar, Chris Van Hollen, Michael Bennet, Bernard Sanders, Brian Schatz, Robert P. Casey, Jr., Patrick Leahy, Cory A. Booker, Jeffrey A. Merkley, Tammy Baldwin, Patty Murray, Mark R. Warner, Benjamin L. Cardin, and Elizabeth Warren to The Honorable Ajit V. Pai, Federal Communications Commission Chairman, March 9, 2020, https://www.gillibrand.senate.gov/imo/media/doc/3.9.2020_Gillibrand_Schumer_Letter_FCC_final.pdf.

funding as far as possible. In response to your questions, if a state hasn't already issued a formal funding commitment, that area will not be excluded from the Rural Digital Opportunities Fund Phase I Auction. In a similar vein, a "broadband subsidy program from 12 years ago" would have no bearing on our inquiry, nor would a future program that "ha[s] not yet awarded funding." I should also note that our goal is to not duplicate funding targeted to a particular area. This means—consistent with the principle I outlined above—if a service provider has state-based funding and a commitment to deploy 25/3 Mbps or better service in one area, it cannot receive FCC funding to deliver similar service to that same area. But it would still be eligible to participate in the Rural Digital Opportunity Fund in other areas in the state that are unserved and not covered by a funding commitment.⁴²

Additionally, the FCC plans to consult with the United States Department of Agriculture (USDA) Rural Utilities Service to exclude any census blocks that substantially overlap with a ReConnect⁴³ awardee from eligibility. As stated in FCC Chairman Pai's March 27, 2020, letter, the intent behind this provision is to limit the potential for overbuild of existing broadband infrastructure, thereby allocating funding to areas wholly lacking broadband infrastructure.

Eligible Telecommunications Carrier (ETC) Status

Telecommunications companies that provide service in high-cost,⁴⁴ typically rural, areas of the country are often eligible for financial support through the FCC's Universal Service Fund (USF).⁴⁵ One requirement for provider participation in the USF is designation as an eligible telecommunications carrier, or ETC.

The ETC designation was created in Section 102 of the 1996 Telecommunications Act (P.L. 104-104) when voice service was the dominant telecommunications technology in America. ETC designation is typically conferred at the state level, unless the state declines or the provider operates in tribal lands. In these cases this authority is delegated to the FCC.

RDOF is a program within the Universal Service Fund High Cost program and as such, participants must be designated as ETCs to be eligible for RDOF support. Some believe that requiring a provider to be an ETC is a barrier to participation in such programs, while others believe that maintaining the ETC requirement and preserving the state's role in the designation is beneficial. For example, a National Association of Regulatory Utility Commissioners (NARUC) letter to the FCC, stated:

Congress has always recognized that universal service is a shared obligation between states and the federal government. That federal-state partnership is vital to assure efficient expenditures of state and federal tax payer dollars to subsidize both carriers and consumers. For many states, the state role in ETC designation process is the linchpin of that partnership.⁴⁶

⁴² Chairman Ajit Pai, Federal Communications Commission, March 27, 2020, p. 2, <https://docs.fcc.gov/public/attachments/DOC-363496A2.pdf>.

⁴³ The USDA's ReConnect Loan and Grant Program furnishes loans and grants to provide funds for the costs of construction, improvement, or acquisition of facilities and equipment needed to provide broadband service in eligible rural areas. For more information, see CRS In Focus IF11262, *USDA's ReConnect Broadband Pilot Program*, by Alyssa R. Casey.

⁴⁴ High-cost areas refer to locations that, due to various factors, require above-average costs to deploy broadband.

⁴⁵ Washington Utilities and Transportation Commission, *Eligible Telecommunications Carriers*, <https://www.utc.wa.gov/regulatedIndustries/utilities/telcom/Pages/EligibleTelecommunicationsCarriers.aspx>.

⁴⁶ Letter from National Association of Regulatory Utility Commissioners to Honorable Roger Wicker, Honorable Maria Cantwell, June 30, 2020, <https://pubs.naruc.org/pub/3C6A4241-155D-0A36-3135-BE1D0CA0BED1>.

Legislation introduced on June 11, 2020, the Expanding Opportunities for Broadband Deployment Act (H.R. 7160), would eliminate the requirement of an ETC designation for broadband providers seeking Universal Service Fund money. In support of the bill, FCC Commissioner Michael O’Rielly stated:

The new bill’s plan to eliminate the outdated and burdensome ETC requirement to participate in USF auctions makes total sense. As I have already explained, funding for the deployment of broadband—an interstate information service—should not function as a backdoor way to expose providers to burdensome and unpredictable intrastate regulations. In addition, I cannot think of any ongoing policy reason to maintain the requirement: the Commission already imposes its own legal, technical, and financial requirements on auction winners, not to mention extensive rules for interconnected VoIP providers outside of the auction context on everything from rural call completion to 9-1-1 obligations, and ETC status doesn’t seem to confer any additional necessary protections. Moreover, as we know from [the Connect America Fund Phase II], ETC status certainly isn’t a guarantee of providers’ ability to meet service milestones. Finally, most ironically, many states have run their own efficient and effective broadband funding programs *without* requiring recipients to become ETCs, increasing participation without any problematic consequences.⁴⁷

Congress could consider whether ETC designation is beneficial and leads to necessary oversight and consumer protection or is a burdensome requirement that is unnecessary and decreases competitive entry into the marketplace for the provision of broadband.

Options for Congress

Some options Congress could take regarding RDOF Phase I and Phase II include conducting oversight hearings and enacting legislation.

Conduct Oversight

Congress could allow the RDOF Phase I to proceed as the FCC has currently planned, while providing oversight through public hearings. For example, the Senate Committee on Commerce, Science, and Transportation held a hearing, “Oversight of the Federal Communications Commission,” on June 24, 2020, which provided committee members an opportunity to examine policy issues before the FCC and to review the agency’s ongoing activities and proceedings.⁴⁸ During the oversight hearing, FCC Commissioner Jessica Rosenworcel and Chairman Ajit Pai discussed, with differing viewpoints, whether to use the more accurate data the FCC plans to collect and utilize for Phase II before dispersing \$16 billion as part of the Phase I RDOF.⁴⁹

⁴⁷ Commissioner Michael O’Rielly, *Removing Unnecessary Barriers and Maximizing Competition in USF Auctions*, Federal Communications Commission, June 18, 2020, <https://www.fcc.gov/news-events/blog/2020/06/18/removing-unnecessary-barriers-and-maximizing-competition-usf-auctions>.

⁴⁸ U.S. Congress, Senate Committee on Commerce, Science, and Transportation, *Oversight of the Federal Communications Commission*, 116th Cong., June 24, 2020, <https://www.commerce.senate.gov/2020/6/oversight-of-the-federal-communications-commission>.

⁴⁹ U.S. Congress, Senate Committee on Commerce, Science, and Transportation, *Oversight of the Federal Communications Commission*, Full Committee Hearing, 116th Cong., June 24, 2020, <https://www.commerce.senate.gov/2020/6/oversight-of-the-federal-communications-commission>.

Enact Legislation

Congress may enact legislation to amend and/or clarify the RDOF requirements and procedures. At the date of this report, four bills have been introduced in the 116th Congress that would make changes to RDOF:

- Title XIV of Division S (§191401) in the Heroes Act (H.R. 6800), introduced on July 23, 2020, would direct the FCC to take certain actions to accelerate the RDOF Phase I auction.
- The Rural Broadband Acceleration Act (H.R. 7022), introduced on May 27, 2020, would direct the FCC to take certain actions to accelerate the RDOF Phase I auction.
- The Expanding Opportunities for Broadband Deployment Act (H.R. 7160), introduced on June 11, 2020, would repeal ETC requirements.
- S. 4201, introduced on July 2, 2020, would direct the FCC to take certain actions to accelerate the RDOF Phase I auction.⁵⁰

Concluding Observations

Many of the RDOF requirements and procedures for Auction 904 were modeled⁵¹ after what the FCC considered to be a successful but smaller Connect America Fund II reverse auction (Auction 903).⁵² However, as the RDOF Phase I progresses, there may be unforeseen challenges or lessons that emerge. Congress may seek to monitor and assess how Phase I proceeds by conducting hearings involving the FCC commissioners, service providers receiving subsidies to construct broadband networks, and/or consumer groups. Congress may also choose to enact legislation to mandate changes to Phase I or new requirements for Phase II.

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⁵⁰Additionally, H.R. 6800, H.R. 7022, and S. 4201 would ensure the FCC creates accurate service maps, would authorize appropriations to the FCC to carry out this title, and would implement a deadline for creation of maps.

⁵¹ See “Phase I: Auction 904 Filing Requirements and Other Procedures” section, above.

⁵² Federal Communications Commission, *Notice and Filing Requirements and Other Procedures for Auction 904*, Public Notice, June 11, 2020, p. 3, <https://docs.fcc.gov/public/attachments/FCC-20-77A1.pdf>.

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