

In the Matter of the Application of Time Warner Cable Information Services (Ohio), LLC for Designation as an Eligible Telecommunications Carrier in Specified Areas to Receive Rural Digital Opportunity Fund Auction (Auction 904) Support for Voice and Broadband Services and Request for Expedited Review)	Case No. 21-0027-TP-UNC
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To support this expansion, TWCIS expects to receive over \$106 million in RDOF funding.⁴ Before this RDOF-supported expansion may be completed, however, TWCIS is required to obtain ETC designation from the state for the census blocks and portions of the census blocks where it receives RDOF support (the “RDOF Census Blocks”).⁵ To that end, TWCIS filed its Application for ETC designation in the above-styled proceeding.

In connection with the Commission’s evaluation of the Application, the Commission should maintain consistency between the state ETC requirements and the census blocks, location counts, and service deployment milestones for which TWCIS must serve and/or comply. Ensuring consistency among these RDOF program requirements and Ohio’s own ETC requirements will ensure certainty for TWCIS as the network is built, as well as ensure the most efficient use of TWCIS’ existing resources. Accordingly, TWCIS hereby requests that the Commission incorporate, in TWCIS’ ETC designation Order, a mechanism to conform (or “true up”) the list of census blocks in which TWCIS is designated as an ETC to reflect any future changes to TWCIS’ RDOF Census Blocks and/or deployment areas. This request is discussed more fully below.

⁴ See *Winning Bidder Summary, FCC Rural Digital Fund Phase I Auction, Auction ID: 904*, dated Dec. 7, 2020, available at: <https://docs.fcc.gov/public/attachments/DA-20-1422A2.pdf>. Once authorized to receive funding, TWCIS will be the entity receiving support payments and the entity that will meet the RDOF public interest obligations in Ohio.

⁵ TWCIS seeks ETC designation in full census blocks where the full census block is eligible for RDOF support; in cases where a census block is only partially eligible for RDOF support, TWCIS seeks ETC designation only as to the supported portion. The vast majority of, but not all, census blocks included in the RDOF auction were included in full. 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 (June 25, 2020), at p. 6 (stating “As the Commission made clear in the *Rural Digital Opportunity Fund Order*, eligible areas would include census blocks served by both price cap carriers and rate-of-return carriers *to the extent that the census block is in the price cap carrier’s territory. That is, only the price cap portion of the census block is eligible.*”) (emphasis added). Throughout this Supplement, TWCIS’ use of the phrase “RDOF Census Blocks” should be understood to refer to full census blocks or *portions* of census blocks, where applicable.

Additionally, Exhibit A to the Application provides a list of the RDOF Census Blocks assigned by the FCC to CCO Holdings, LLC in Ohio. To the extent there is any inconsistency between the list of RDOF Census Blocks on that Exhibit and the list at the FCC’s RDOF Dashboard (<https://auctiondata.fcc.gov/public/projects/auction904>), the list at the FCC’s RDOF Dashboard shall control with respect to where TWCIS is seeking ETC designation and accordingly will have ETC obligations. In addition, in the event the FCC were to modify the census block award in the future, such as in response to a waiver petition or otherwise, any such modified census blocks shall constitute the RDOF Census Blocks for purposes of the ETC designation.

DISCUSSION

In its *RDOF Order*, the FCC acknowledged that its data regarding broadband deployment in the areas receiving support under the RDOF program would need to be updated. It also recognized that these updates could affect location counts and service deployment milestones applicable to a given RDOF participant's census blocks.⁶ As a result of the data used by the FCC, it was inevitable that the RDOF Auction would include some census blocks that were already served by an existing broadband provider at the time of the Auction and therefore should have been excluded.

Since completing the RDOF Auction, TWCIS and its affiliates have begun reviewing their RDOF-awarded census blocks on a nationwide basis,⁷ and they have already identified certain areas in several states, including in large portions of Massachusetts, and in smaller areas in Kentucky, Missouri, Virginia, and Wisconsin, where a provider already serves, or will serve, a particular RDOF-awarded census block with high-speed broadband Internet access services. In almost all of these cases, the existing broadband provider is the recipient of a grant from a state or Tribal authority. Several affiliates of TWCIS have jointly filed a Petition for Waiver with the FCC, alerting the FCC to these overlapping grants and seeking a limited waiver of their RDOF application and deployment obligations in these areas.⁸ In short, those TWCIS affiliates are seeking to have certain census blocks – or portions of census blocks – removed from their final list of RDOF Census Blocks because they are already served and therefore never should have been included in the RDOF Auction to begin with. The Waiver Petition is currently before the FCC, but the FCC has not ruled on it yet. If the FCC grants the Waiver Petition (either in whole or in part), that action may remove certain census blocks (or portions of census blocks) from the lists of census blocks awarded to TWCIS' affiliates. Although none of the locations identified in the waiver request currently involve census blocks located in Ohio, should TWCIS identify census blocks

⁶ See *Rural Digital Opportunity Fund*, WC Docket Nos. 19-126 and 10-90, Report and Order, 35 FCC Rcd 686, 690-94, paras. 45-55 (Jan. 30, 2020) (“*RDOF Order*”).

⁷ As of the date of this Supplement, TWCIS and its affiliates have reviewed approximately 1,000 census block groups (“CBGs”) out of the total 5,366 CBGs for which TWCIS or a TWCIS affiliate was a winning bidder.

⁸ *In the Matter of Rural Digital Opportunity Fund*, Petition for Waiver, FCC WC Docket No. 19-126 (May 11, 2021) (“*Waiver Petition*”).

containing similar circumstances, it may want to take further action to modify its RDOF Census Blocks.

So that TWCIS may react quickly and efficiently to any changes implemented by the FCC to these critical buildout requirements, TWCIS requests that any Commission Order granting ETC designation to TWCIS expressly recognize that these key aspects of the FCC's RDOF program may be subject to certain limited changes. Additionally, to the extent that TWCIS' RDOF deployment areas are otherwise modified in the future, TWCIS requests that any ETC designation Order include a mechanism to incorporate these modifications.

A. There may be subsidized competitors that already serve, or have received funding to serve, an RDOF award recipient's census blocks.

For RDOF, the FCC determined that support would be available only for specific eligible census blocks that were wholly unserved with broadband at speeds of at least 25/3 Mbps.⁹ The FCC directed its staff to identify these unserved census blocks, compile an initial list, and conduct a challenge process.¹⁰ The FCC's staff consulted with the U.S. Department of Agriculture's Rural Utility Service ("RUS") to exclude the portions of any census blocks that substantially overlapped with the RUS' ReConnect Program,¹¹ and the staff conducted a census block challenge process to eliminate from auction eligibility any census blocks that are already served. In October 2020, the FCC's staff issued its final list of eligible census blocks, which was largely based on 2019 data.¹²

Since the creation of RDOF, however, other potential sources of federal and state funding have become available to expand broadband to rural and unserved areas. An example is the 2020 federal CARES Act, which, as part of stimulus relief in the aftermath of the COVID-19 pandemic, disbursed funding to the states during the 2020 calendar year for broadband infrastructure investment and required buildout of facilities by December 31, 2020. While these CARES Act funds were not distributed directly

⁹ *RDOF Order* at para. 12.

¹⁰ *Id.* at paras. 12-14.

¹¹ *Id.* at para. 13 and FN 31.

¹² See *Wireline Competition Bureau and Office of Economics and Analytics Announce Release Final List and Map of Eligible Areas for the RDOF Phase I Auction*, 35 FCC Rcd 11283 (Oct. 8, 2020).

from the federal government to broadband providers, allocations of CARES Act money to the states was used by them to fund broadband deployment.

In addition to federal funding, many states have created their own state-funded broadband programs and may have awarded funds to census blocks that were part of the FCC's list of unserved census blocks compiled based on 2019 data. In some cases, these more recent federal and/or state efforts supporting broadband deployment overlap with RDOF-assigned census blocks, including ones assigned to TWCIS.

As described in the FCC Waiver Petition filed by TWCIS' affiliates, in some states, existing service providers are already serving and/or receiving broadband subsidies under federal or state programs to serve census blocks that have been assigned to RDOF participants. (This is an issue facing many RDOF winners, not just TWCIS.) These areas were ineligible for RDOF support under the FCC's rules, which expressly excluded the following categories of census blocks: (1) census blocks where a CAF Phase II Auction winning bidder must deploy broadband; (2) census blocks where a Rural Broadband Experiment support recipient must deploy broadband; (3) census blocks where a terrestrial provider offers both voice and broadband of 25/3 Mbps according to the most recent publicly available Form 477 data; (4) census blocks awarded funding through the RUS ReConnect Program; and (5) census blocks awarded funding through other similar federal or state broadband subsidy programs to provide at least 25/3 Mbps service.¹³

As a result of these overlaps and the presence of existing broadband providers, the TWCIS affiliates filing the Waiver Petition have sought relief from the FCC to avoid an inefficient and ineffective use of their RDOF funds to overbuild census blocks in which a large majority of the estimated locations either already have, or are expected to soon receive, broadband Internet access service. Their petition to the FCC does not directly implicate TWCIS' RDOF-funded expansion in Ohio. However, it is reasonably possible that in the future either TWCIS or the FCC could discover similar overlaps in TWCIS' RDOF

¹³ *RDOF Order* at paras. 12-13.

Census Blocks. If that happens, the FCC could change TWCIS' buildout requirements, either in response to a petition from TWCIS or on its own accord. If the FCC makes any such changes, TWCIS' ETC designation should change to track the census blocks in which TWCIS is actually receiving RDOF support and is subject to an RDOF deployment obligation.

B. The FCC's location counts within census blocks are likely to change.

Given its reliance on model data, the FCC also expects the location counts within its RDOF-awarded census blocks to change. Specifically, to develop its RDOF location counts, the FCC used the same location counts that it used for its Connect America Cost-Model ("CAM") – which is based on census data collected in 2011.¹⁴ Awardees must provide updated location counts to the FCC by the sixth year of the RDOF program. FCC staff, no later than the end of year six, must publish revised location counts.¹⁵ Awardees will be required to offer service to the number of locations identified in this subsequent release,¹⁶ and RDOF support amounts will be reduced in the case of substantially fewer locations within an RDOF census block.

C. The FCC's service milestones may be extended in the case of a greater number of locations in a census block.

Next, the FCC has been clear that its service deployment milestones are "interim."¹⁷ Awardees are required to commercially offer service to 40% of the CAM-calculated number of locations in the state by the end of the third full calendar year after funding authorization, and 20% each year thereafter.¹⁸ Recognizing that location counts could change significantly, the FCC will allow carriers whose location counts increase by 35% within census blocks to complete 100% deployment by year eight (two additional years),¹⁹ and require deployment at the end of the sixth year only to reach the original estimated locations.

¹⁴ *RDOF Order* at para. 47.

¹⁵ *Id.* at para. 45.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at para. 49.

While TWCIS and its affiliates intend to initiate service on a rolling basis as network facilities are deployed,²⁰ TWCIS also wishes to inform the Commission that the FCC's service deployment milestones may be extended where service providers must build to substantially more locations in a given census block.

D. The Commission can serve the public interest by adopting a mechanism to incorporate future changes to the RDOF Census Blocks to the area of TWCIS' ETC designation.

Through the RDOF program, new high-speed broadband and voice networks will be constructed in rural areas of Ohio where there would otherwise be no such networks. Ohio customers will benefit by being able to receive new voice and high-speed broadband services. TWCIS' and its affiliates' efforts to bring these modern high-speed broadband Internet and voice services to these rural areas, however, could get delayed or derailed if, over time, the area of TWCIS' ETC designation does not remain consistent with the census blocks in which it is actually receiving RDOF support. Maintaining consistency would be administratively efficient for both the Commission and TWCIS.

For example, if the Commission's Order does not account for future changes, TWCIS will have to seek a discontinuance of service and a relinquishment of its ETC status each time the census blocks in which it receives RDOF support change. This will impose unnecessary administrative burdens on the Commission and TWCIS. As a result, TWCIS would not be able to focus as easily on its mission of delivering high-quality services to Ohio residents, even when it is clear from the outset that TWCIS seeks ETC designation only in the census blocks where it deploys service and receives grant awards pursuant to RDOF.

Incorporating future changes to the RDOF Census Blocks will result in no potential harm to the Commission or consumers. Because such an incorporation mechanism will create efficiency, avoid delays and provide business certainty for RDOF participants, the Commission's adoption of such a mechanism would serve the public interest.

²⁰ All services are provided in accordance with applicable law and consistent with applicable terms of service and other policies.

TWCIS's Application for ETC designation relies on the RDOF Census Blocks and location counts and is contingent upon TWCIS' receipt of RDOF funding in those census blocks. For this reason, TWCIS asks that any Order granting ETC designation expressly provide a mechanism to conform the ETC designation so that it reflects only the census blocks where TWCIS is actually receiving RDOF support and therefore subject to an RDOF deployment obligation, by including in the Order language substantively similar to the following:

TWCIS is designated as an ETC in the eligible portions of the census blocks shown in Appendix [X] where it was assigned a winning bid in the RDOF auction. If TWCIS does not receive RDOF support in any such census block or portion thereof, then TWCIS will file notice in this case of such change to the census block or portion thereof and such census block or portion thereof will be removed from TWCIS' ETC-designated service area without further action by the Commission.²¹

CONCLUSION

Incorporating any future changes to census blocks, location counts, and service deployment milestones that RDOF recipients must serve will ensure certainty for RDOF award recipients as they build out their networks and ensure the most efficient use of existing resources. For these reasons,

²¹ Other state regulatory commissions, including those in Missouri and North Carolina, have similarly adopted mechanisms to ensure that TWCIS' affiliates' ETC designations conform to those service areas designated for RDOF support by the FCC. See *Joint Application of Charter Fiberlink-Missouri, LLC and Time Warner Cable Information Systems (Missouri) LLC for Designation as ETCs*, File No. TA-2021-0204, Order, Mo. PSC (iss. Apr. 7, 2021) (ordering that "[i]f the FCC removes any such census block from eligibility for RDOF support then the Company or Companies will file into this case file a copy of the FCC documentation removing the census block. Such a filing will cause the census block to be removed from the indicated company's ETC designated service area automatically and without further action by the Commission."); *In the Matter of Designation of Carriers Eligible for Universal Service Support*, Order Designating Charter Fiberlink NC-CCO, LLC and Time Warner Cable Information Services (North Carolina), LLC, as Eligible Telecommunications Carriers, North Car. Util. Comm'n, Docket No. P-100, Sub 133C (iss. May 5, 2021) (concluding that "if the FCC removes or alters the census blocks awarded to the Charter Entities, the affected company must notify the Commission by filing in this docket a copy of the FCC's order, and the affected census blocks will automatically be revised or removed from the indicated company's ETC-designated service area without further action by the Commission").

TWCIS respectfully requests that the Commission grant TWCIS ETC designation in the RDOF Census Blocks identified in its Application and incorporate in its ETC designation Order a mechanism to conform or “true up” to any subsequent modifications to TWCIS’s RDOF obligations.

Respectfully submitted,

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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

5/14/2021 10:43:53 AM

in

Case No(s). 21-0027-TP-UNC

Summary: Application Supplement to Application electronically filed by Mrs. Gretchen L. Petrucci on behalf of Time Warner Cable Information Services (Ohio), LLC