

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

In the Matter of)	
)	
Rural Digital Opportunity Fund)	WC Docket No. 19-126
)	
Connect America Fund)	WC Docket No. 10-90
)	

REPLY COMMENTS OF CHARTER COMMUNICATIONS, INC.

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Charter Communications, Inc. hereby submits these reply comments in support of its Petition for Waiver of the Commission’s rules governing the Rural Digital Opportunity Fund (“RDOF”) auction to exclude from Phase I of the auction certain census blocks in which Charter already has plans to deploy qualifying service to satisfy commitments to the State of New York.¹

INTRODUCTION AND EXECUTIVE SUMMARY

The record filed in response to Charter’s Petition underscores the need to grant the waiver expeditiously so that the Commission can focus finite universal service resources on unserved areas and avoid overbuilding. Indeed, this is ultimately just an issue of timing; had the auction been scheduled later, the census blocks would have service, be excluded under the Commission’s rules, and require no waiver. Commenters that raise concerns about the Petition fail to address the Commission’s core public policy goals and instead take issue with its decision to exclude partially-served census blocks from Phase I of the RDOF, ignoring that such blocks may gain funding in Phase II. Similarly, concerns about Charter’s limited flexibility under its New York commitments

¹ Charter Petition for Waiver, WC Docket Nos. 19-126, 10-90 (Apr. 10, 2020) (“Petition”).

ignore crucial facts, including that (a) Charter has nearly completed deployment to many of the census blocks at issue, and (b) Charter’s allowance to make substitutions to the addresses it will serve to meet the commitment is constrained—although Charter is permitted to make some discretionary changes to that list (which are strictly capped in quantity), it does not anticipate doing so in a way that would cause it to no longer serve the specific census blocks that are the subject of the Petition.

Claims that granting Charter’s Petition would harm competition are wrong, and irrelevant to analyzing whether these census blocks should be excluded from Phase I of the RDOF auction, because universal service fund support is not intended to subsidize competition:² Phase 1 excludes areas where “25/3 Mbps or better service has been or *will be* deployed without Rural Digital Opportunity Fund support” to preserve finite universal service funding for the areas that need it most, *i.e.*, wholly unserved census blocks.³

Finally, there is nothing procedurally improper about Charter’s waiver request. Commenters cite no authority for their claims that Charter’s Petition is premature or improperly substitutes for a petition for reconsideration. The Commission has broad authority to waive any provision of its rules “at any time” for “good cause.” As Charter has shown—and as numerous commenters agree, such as the town supervisors of the towns of North Collins and Porter, business development organizations like the Business Council of New York State, Inc. and the Buffalo

² See, e.g., *In re Connect America Fund*, Second Order on Reconsideration, 33 FCC Rcd 2540, 2556 ¶ 25 n.128 (2018) (“The Commission has repeatedly held that universal service funding is meant to subsidize the expansion and preservation of coverage, not marketplace competition or certain competitors.”) (“*CAF Order III*”); *In re Connect America Fund*, Order on Reconsideration and Second Report and Order, 32 FCC Rcd 6282, 6292 ¶ 18 (2017) (“Our objective in [*Mobility Fund*]-II, in accordance with the *USF/ICC Transformation Order*, is to subsidize reasonably comparable service in unserved areas, not to subsidize competition.”) (“*CAF Order II*”).

³ *In re Rural Digital Opportunity Fund Connect America Fund*, Report and Order, 35 FCC Rcd 686, 692 ¶ 13 & n.32 (2020) (“*RDOF Order*”) (emphasis added).

Niagara Partnership, and community organizations like the YWCA of Syracuse and Onondaga County and the Boys & Girls Clubs of Schenectady⁴—good cause exists to exclude the census blocks at issue here to further the RDOF’s goals of closing the digital divide and connecting unserved areas with broadband.

I. The Record Underscores that Granting the Petition Is Necessary to Further the Commission’s Goals of Universal Service as well as the Public Interest.

In adopting Phase I of the RDOF auction, the Commission aimed to “maximize the impact of finite universal service resources,” by “targeting support to prioritized areas,” *i.e.*, areas that are “wholly unserved.”⁵ As NCTA highlights, this policy is longstanding; the Commission’s Connect America Fund Order (“*CAF Order*”) explicitly relied on the same rationale, “target[ing] support [in] areas not served by an unsubsidized competitor.”⁶ Granting Charter’s Petition, as NCTA explains, would align with the Commission’s policy of directing finite universal service support

⁴ See, e.g., Letter from John Tobia, Town Supervisor, Town of North Collins, to Ajit Pai, Chairman, FCC, WC Docket Nos. 19-126, 10-90 at 1 (Apr. 27, 2020) (“RDOF should focus on regions outside of Charter’s build – maximizing internet accessibility to New Yorkers in need.”) (“*North Collins Comments*”); Letter from John Johnston, Supervisor, Town of Porter, to Marlene Dortch, Secretary, FCC, WC Docket Nos. 19-126, 10-90 at 1 (Apr. 27, 2020) (“I would like to offer my support for Charter’s *Petition for Waiver* to ensure federal broadband subsidies are not used to build on top of Charter’s network.”) (“*Town of Porter Comments*”); Letter from Heather Briccetti, Business Council of New York State, Inc., to Marlene Dortch, Secretary, FCC, WC Docket Nos. 19-126, 10-90 at 1 (Apr. 27, 2020) (“RDOF’s scarce resources should remain available to other areas of New York where federal subsidies are necessary to ensure broadband buildout – not to duplicate efforts in areas already being privately funded.”) (“*NYS Business Council Comments*”); Letter from Dottie Gallagher, President and CEO, Buffalo Niagara Partnership, to Marlene Dortch, Secretary, FCC, WC Docket Nos. 19-126, 10-90 at 1 (Apr. 27, 2020) (“If Charter’s blocks are not excluded, these areas could be overbuilt, which would be an ineffective use of hard-earned taxpayer dollars.”) (“*Buffalo Niagara Partnership Comments*”); Letter from Fanny Villarreal, Executive Director/CEO, YWCA of Syracuse and Onondaga County, to Marlene Dortch, Secretary, FCC, WC Docket Nos. 19-126, 10-90 at 1-2 (Apr. 27, 2020) (“[W]e cannot risk overbuilding some areas while others go unserved.”); Letter from Shane Barga, Executive Director, Boys & Girls Clubs of Schenectady, to Marlene Dortch, Secretary, FCC, WC Docket Nos. 19-126, 10-90 at 1-2 (Apr. 27, 2020) (“Charter’s \$600 million investment of its own capital to build out rural areas in our region means that federal subsidies can be reserved for areas that are truly unserved.”).

⁵ *RDOF Order*, 35 FCC Rcd at 693-95 ¶¶ 15, 18.

⁶ Comments of NCTA – The Internet and Television Association, WC Docket Nos. 19-126, 10-90 at 2 (Apr. 21, 2020) (“*NCTA Comments*”) (citing *In re Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17,663, 17,729 ¶ 170 (2011)).

toward areas where service would not be deployed otherwise.⁷ NCTA rightly notes that the Commission has also reemphasized this priority very recently, proposing that its 5G Fund target “rural areas of our country that would be unlikely to see timely deployment of voice and 5G broadband service absent high-cost support and or as part of T-Mobile’s transaction-related commitments.”⁸ The Commission’s 5G Fund for Rural America Notice of Proposed Rulemaking underscores the concern, “not[ing] that failing to adequately account for T-Mobile’s enforceable 5G deployment commitments would risk using our limited universal service support to overbuild areas that would see timely, unsubsidized 5G deployment by T-Mobile.”⁹

Here, the census blocks that are the subject of the Petition are ones in which “25/3 Mbps or better service . . . will be deployed without Rural Digital Opportunity Fund support”¹⁰ pursuant to Charter’s New York broadband deployment commitments.¹¹ As the town supervisors for the towns of North Collins and Porter note, disbursing RDOF funds to such areas diverts scarce

⁷ *NCTA Comments* at 2-3; *see also* Letter from John Brezinski, Minority Leader, Herkimer County Legislature, to Marlene Dortch, Secretary, FCC, WC Docket Nos. 19-126, 10-90 (Apr. 27, 2020); Letter from Mark Eagan, President & CEO, Capital Region Chamber of Commerce, WC Docket Nos. 19-126, 10-90 (Apr. 27, 2020); Letter from Debora Brown-Johnson, President, NAACP Albany Branch, to Marlene Dortch, Secretary, FCC, WC Docket Nos. 19-126, 10-90 (Apr. 27, 2020); Letter from Decarto Draper, Head Pastor, Tucker Missionary Baptist Church, to Marlene Dortch, Secretary, FCC, WC Docket Nos. 19-126, 10-90 (Apr. 28, 2020); Letter from Chery Brannan, Founder & CEO, Sister to Sister International, Inc., to Marlene Dortch, Secretary, FCC, WC Docket Nos. 19-126, 10-90 at 1 (Apr. 26, 2020); Letter from Shari McDonough, Boys & Girls Clubs of Buffalo, to Marlene Dortch, Secretary, FCC, WC Docket Nos. 19-126, 10-90 (Apr. 24, 2020).

⁸ *NCTA Comments* at 5 n.14 (quoting *Establishing a 5G Fund for Rural America*, GN Docket No. 20-32, Notice of Proposed Rulemaking and Order, FCC-CIRC2004-02 (Apr. 2, 2020)).

⁹ *In re Establishing a 5G Fund for Rural America*, Notice of Proposed Rulemaking and Order, GN Docket No. 20-32, FCC 20-52 ¶ 130 n.196 (rel. Apr. 24, 2020).

¹⁰ *RDOF Order*, 35 FCC Rcd at 692 ¶ 13 n.32; *see also NCTA Comments* at 3. Starry, Inc.’s curious (and uncited) assertion that the Commission is not explicitly concerned with overbuilding in the future is therefore expressly contradicted by the *RDOF Order*. Comments of Starry, Inc., WC Docket Nos. 19-126, 10-90 at 4 (Apr. 21, 2020) (“*Starry, Inc. Comments*”) (“the Commission is not concerned with subsidizing networks that may be overbuilt *in the future*.” (emphasis in original)).

¹¹ *See* Petition, Exhibits A-C.

resources from “wholly unserved” census blocks¹²—precisely the areas Phase I is meant to help. The Supervisor for the Town of Porter, which has “been on both sides of the digital divide,” urges the Commission to ensure that RDOF funds are “not used to build on top of Charter’s network” in order to preserve RDOF subsidies “for the far too many areas of New York that otherwise have no hope of access to reliable high speed broadband.”¹³ Organizations like the Business Council of New York State, Inc. and the Buffalo Niagara Partnership note that “RDOF’s scarce resources” should be directed “where federal subsidies are necessary to ensure broadband buildout – not to duplicate efforts in areas already being privately funded,”¹⁴ and that “[r]emoving these areas from [RDOF] eligibility means more federal funding is available per census block for the 8,609 RDOF-eligible blocks in New York that remain.”¹⁵

As NCTA correctly observes, the only factual difference between Charter’s circumstances and those contemplated as justifying Phase I exclusion in the *RDOF Order*—*i.e.*, that Charter’s commitment is self-funded and the others are not—in no way justifies different conclusions regarding eligibility.¹⁶ As explained in the Petition, these circumstances constitute “good cause” to grant the requested waiver and exclude the census blocks at issue.¹⁷

¹² See *North Collins Comments* at 1; *Town of Porter Comments* at 1.

¹³ *Town of Porter Comments* at 1; see also Letter from Charles Reaves, Executive Director, Literacy Rochester, to Marlene Dortch, Secretary, FCC, WC Docket Nos. 19-126, 10-90 (Apr. 26, 2020); Letter from Ashanti H. Dickerson, Pastor, New Hope Baptist Church Syracuse, to Ajit Pai, Chairman, FCC, WC Docket Nos. 19-126, 10-90 (Apr. 28, 2020); Letter from Shawn Roberson, Pastor, Southern Missionary Baptist Church, to Ajit Pai, Chairman, FCC, WC Docket Nos. 19-126, 10-90 (Apr. 27, 2020).

¹⁴ *NYS Business Council Comments* at 1.

¹⁵ *Buffalo Niagara Partnership Comments* at 1; see also Letter from Timothy Brown, Pastor, Mount Zion Missionary Baptist Church, to Ajit Pai, Chairman, FCC, WC Docket Nos. 19-126, 10-90 (Apr. 27, 2020); Letter from Kinzer Pointer, Agape Fellowship Baptist Church, to Ajit Pai, Chairman, FCC, WC Docket Nos. 19-126, 10-90 (Apr. 27, 2020); Letter from H. Bernard Alex, Pastor, Victory Temple Baptist Church, to Ajit Pai, Chairman, FCC, WC Docket Nos. 19-126, 10-90 (Apr. 27, 2020).

¹⁶ See *NCTA Comments* at 4.

¹⁷ See Petition at 2-5. Otsego Electric notes that two of the waiver decisions cited in Charter’s Petition granted waiver because not doing so would have caused hardship in high-cost areas, or deprived those areas of telecommunications

II. Concerns Regarding Charter’s Petition Are Inapposite and Fail to Explain How Overbuilding Promotes the Commission’s Goals.

Some commenters raise concerns regarding the scope of Charter’s commitment in New York, ranging from the specific number of addresses that will be served in a particular census block to the specific parameters of the New York settlement.¹⁸ Not only are these concerns unfounded, they essentially attack the Commission’s standard for determining eligible areas for Phase I of the RDOF auction.

A. Exclusion from Phase I of the RDOF Auction Turns on Whether a Census Block Is “Wholly Unserved.”

Under the Commission’s rules, census blocks where a provider serves a single household are ineligible for Phase I of the RDOF auction. The Commission made this choice explicit, stating that “we decline to expand the list of eligible areas at this time and instead focus Phase I on the known *wholly unserved* census blocks,”¹⁹ and noting that “Phase II will target unserved locations within areas that data demonstrates are only partially served.”²⁰ It acknowledged that “[t]he FCC Form 477 data have been criticized for identifying partially served blocks as ‘served,’” but noted

and information services. Joint Comments of Otsego Electric Cooperative, Inc. and OEConnect, LLC, WC Docket Nos. 19-126, 10-90 at 5 (Apr. 21, 2020) (“*Otsego Comments*”). According to Otsego Electric, Charter’s Petition presents a scenario where *granting* waiver would deny rural areas service. This criticism misses the mark. Charter is undisputedly subject to deployment commitments in these areas, and has taken material steps to fulfill these commitments already. Given these facts, allocating RDOF support to such areas would represent a suboptimal use of limited resources; as the *RDOF Order* itself states, this funding is better spent on “wholly unserved” areas. Otsego Electric does not and indeed cannot explain why the areas at issue in the Petition represent better uses of scarce public funds than those in which no provider at all is committed to deploy service.

¹⁸ See, e.g., Letter from David Wolff, Broadband Committee Chairman, AdkAction, to Ajit Pai, Chairman, FCC, WC Docket Nos. 19-126, 10-90 at 1-2 (Apr. 21, 2020) (“*AdkAction Comments*”); Letter from Robin J. Hill, Executive Director, Central Adirondack Partnership for the 21st Century, to Ajit Pai, Chairman, FCC, WC Docket Nos. 19-126, 10-90 at 1-2 (Apr. 21, 2020) (“*Central Adirondack Partnership Comments*”); Letter from Beth Schiller, Owner, Cv Wireless LLC, to Ajit Pai, Chairman, FCC, WC Docket Nos. 19-126, 10-90 at 1-2 (Apr. 20, 2020) (“*Cv Wireless Comments*”); Letter from David Berkstresser, Supervisor, Town of Webb, to Ajit Pai, Chairman, FCC, WC Docket Nos. 19-126, 10-90 at 1-2 (Apr. 21, 2020) (“*Town of Webb Comments*”); see also *Otsego Comments* at 3-4; *Starry, Inc. comments* at 4-5.

¹⁹ *RDOF Order*, 35 FCC Rcd at 692 ¶ 13 (emphasis added).

²⁰ *Id.* at 688 ¶ 5.

that “[t]he primary shortcomings of FCC Form 477 data do not come into play under the two-phased framework we adopt here” because census blocks that are partially served can be addressed and identified in the *second* phase.²¹ The Commission therefore excluded areas identified as “served” in the Form 477 data from the first phase with the understanding that the effect of this decision would be to defer areas that are served only partially to Phase II.

Consequently, commenters who raise concerns that granting the waiver would lead to excluding census blocks that Charter may only partially serve through its New York commitments, or that Charter may not connect every household in the census blocks at issue, are attacking the Commission’s decision to fund wholly unserved census blocks in Phase I and partially unserved census blocks in Phase II.²² The Commission should decline these comments’ implicit invitation to apply a different and higher standard to Charter’s request to exclude these census blocks from Phase I than the *RDOF Order* itself does. The impact of their contention is in any event limited by the fact that approximately 25% of the 2,127 census blocks for which waiver is sought should be excluded from Phase I regardless of how the Commission resolves the Petition, as they have already received New York State broadband awards.²³ The presence of independent grounds to exclude these areas further narrows the scope and impact of any waiver granted here.

Tellingly, the New York State Public Service Commission (“NYSPSC”)—which imposed the state deployment obligations under discussion in order to expand service to the rural and unserved areas at issue in this proceeding—does not oppose the Petition, asking instead “that the

²¹ *RDOF Order*, 35 FCC Rcd at 690-91 ¶¶ 10-11.

²² See *AdkAction Comments* at 1-2; *Central Adirondack Partnership Comments* at 1-2; *Cv Wireless Comments* at 1-2; *Town of Webb Comments* at 1-2; see generally *NYSPSC Comments* at 1 (requesting consideration of the fact that Charter’s commitment “does not guarantee that every address within a census block will get passed”).

²³ See Exhibit A (identifying the census blocks awarded a New York State broadband award).

FCC ensure that New York State is not harmed and declare that if Charter’s petition, or other similar requests, is granted for Phase I, New York will remain eligible for *future* phases of RDOF auctions.”²⁴ The NYSPSC argues only that exclusion would be inappropriate at Phase II or later, an argument Charter itself agrees with, as the blocks at issue will be partially served in the future and therefore potentially eligible for Phase II.²⁵

Some commenters urge the Commission to condition any waiver on subjecting Charter to RDOF milestones and noncompliance penalties for the excluded blocks, or to require Charter to serve all census blocks in its region.²⁶ These commenters are essentially asking the Commission to treat Charter as a winning bidder in the RDOF auction and add federal milestones to a state commitment. There is no basis for doing so—no Form 477 filer has this heightened burden.

B. Charter’s Limited Flexibility Is Immaterial to the Need for Waiver to Focus Phase I on Unserved Areas and Avoid Overbuilding.

Some commenters note that Charter possesses, consistent with its New York commitments, “a small degree of flexibility in making substitutions to the list of specific addresses required to be served,” and suggest that Charter therefore might ultimately satisfy those commitments through construction in census blocks other than those that are the subject of the Petition.²⁷ Though Charter has some limited ability to make changes to the specific addresses it will use to meet its settlement

²⁴ Letter from Robert Rosenthal, General Counsel, New York State Public Service Commission, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 19-126, 10-90 at 2 (Apr. 21, 2020) (“*NYSPSC Comments*”) (requesting that “New York remain eligible for receipt of any additional funds awarded through *subsequent phases* of the RDOF auctions” (emphasis added)).

²⁵ *Id.* at 3.

²⁶ See *Central Adirondack Partnership Comments* at 2; *Cv Wireless Comments* at 1; *Town of Webb Comments* at 1; Letter from Andrea M. Dumas, Mayor, Village of Malone, to Ajit Pai, Chairman, FCC, WC Docket Nos. 19-126, 10-90 at 2 (Apr. 21, 2020); Letter from James T. Townsend, Senior Advisor, Adirondack Landowners’ Association, to Ajit Pai, Chairman, FCC, WC Docket Nos. 19-126, 10-90 at 2 (Apr. 21, 2020).

²⁷ See, e.g., *NYSPSC Comments* at 2; see also *Otsego Comments* at 3.

obligations, commenters significantly overstate the relevance of that flexibility to the Petition.²⁸ As Charter has demonstrated, it has already made significant progress in deploying service to the areas at issue, and deployment will be complete to a substantial number of those census blocks before the auction begins in October.²⁹ Charter’s ability to make discretionary “swaps” to the list of addresses submitted to the NYSPSC is also, as the NYSPSC comments note, subject to a strict numerical cap,³⁰ and some of those discretionary swaps have already been “used” and are reflected in the list of census blocks that are the subject of the Petition. More importantly, however, Charter has no current plans or intentions to use its theoretical ability to make modest future changes to the address list in a manner that would cause it to no longer extend service to the census blocks at issue. Charter has expended significant resources in these census blocks already, including developing time-intensive network deployment plans that it is now in the process of implementing. Finally, though Charter’s settlement agreement permits some circumstances in which Charter can substitute addresses without counting towards its numerical cap, those circumstances would either not affect service to the census block or would generally arise only where the original census block is ineligible for RDOF support in any event.³¹

²⁸ Several commenters allege that Charter’s New York commitments should be discounted by the Commission because of what one commenter terms a “history of delay” with the deadlines associated with New York Public Service Commission orders preceding the current settlement agreement. *See, e.g.*, Comments of the Wireless Internet Service Providers Association, WC Docket Nos. 19-126, 10-90 at 7-8 (Apr. 21, 2020) (“*WISPA Comments*”); Letter from Didi Barrett, Assembly Member of New York, 106th District, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 19-126, 10-90 at 1 (Apr. 20, 2020) (“*Barrett Comments*”); *see also Starry, Inc. Comments* at 2. The settlement agreement limits Charter’s ability to comment publicly on the disputes that preceded it, but Charter notes that the settlement resolved those previous disputes without any finding of liability or violation on Charter’s part, and that Charter has been reporting progress under the settlement far in excess of the agreed upon buildout schedule.

²⁹ *See* Petition, Exhibit A (tracking census blocks by walkout status, design status, submission of project pole permits, and receipt of pole licenses).

³⁰ *See NYSPSC Comments* at 2.

³¹ The agreement does not count substitutions made due to (a) technical corrections to the address format; (b) addresses that replace those originally in designated *urban* areas; (c) addresses that are mistaken, duplicative, or non-verifiable; (d) addresses removed because the New York State Department of Public Service determines that they are not eligible under the terms of Charter’s commitment (*e.g.*, because it concludes that Charter’s existing facilities are sufficiently

C. RDOF Is Not Meant to Foster Competition, and Charter’s Petition Is Not Anti-Competitive.

Though several commenters claim that granting the Petition would harm competition,³² that assertion is both incorrect and irrelevant to the Petition.³³ The purpose of the universal service fund is not to subsidize competition, but to support the deployment of service where there is none.³⁴ Accordingly, with respect to RDOF, the Commission has determined that scarce universal service support is better spent on the large number of rural areas that lack 25/3 Mbps broadband service, rather than on increasing the number of providers in areas where service is already available.³⁵

III. Claims that the Petition Is Procedurally Inappropriate are Meritless.

WISPA’s claims that Charter’s Petition is premature and that Charter is somehow prohibited from seeking a waiver because it did not file a petition for reconsideration in the *RDOF* proceeding are meritless.³⁶ WISPA contends that Charter’s Petition is premature because the Wireline Competition Bureau has not yet issued a public notice containing the final list of census

proximate to the address to serve it without new network expansion, service from another provider is already available there, or it overlaps an existing wireline state broadband grant); or (e) where Charter determines another provider is already present. *See id.*, Sections 5(a)-5(e).

³² *See, e.g., Starry, Inc. Comments* at 4-5 (arguing that granting the Petition “would set a strong precedent for other providers to make attempts to corner markets”); *Otsego Comments* at 4; *WISPA Comments* at 5-6, 9 (“[G]ranting the Petition would open the door for any party to leverage a merger commitment into foreclosure of competition.”); *Barrett Comments* at 1; *see also* Letter from Frank Thomas, Chairman, Warren County Board of Supervisors, to Ajit Pai, Chairman, FCC, WC Docket Nos. 19-126, 10-90 at 1 (Apr. 21, 2020).

³³ WISPA’s assertion that Charter cannot apply for RDOF funding for these blocks because of a provision in Charter’s FCC merger order, and is therefore trying to block funding for other providers, is likewise incorrect and inapposite. *WISPA Comments* at 6-7. The FCC merger conditions to which it refers prohibit Charter from using universal service funding to satisfy the Commission’s *federal* deployment obligations.

³⁴ *See, e.g., CAF Order III*, 33 FCC Rcd at 2556 ¶ 25 n.128 (“The Commission has repeatedly held that universal service funding is meant to subsidize the expansion and preservation of coverage, not marketplace competition or certain competitors.”); *CAF Order II*, 32 FCC Rcd at 6292 ¶ 18 (“Our objective in [*Mobility Fund*]-II, in accordance with the *USF/ICC Transformation Order*, is to subsidize reasonably comparable service in unserved areas, not to subsidize competition.”).

³⁵ In any event, concerns about competition are misguided. Providers who wish to deploy service in the census blocks at issue will be able to compete with Charter on what will be, at the very least, an even playing field; Charter will receive no support via Phase I to serve such areas, and neither will they.

³⁶ *WISPA Comments* at 3-5.

blocks eligible for RDOF support.³⁷ But WISPA identifies no requirement to wait until census blocks have been conclusively identified as eligible for RDOF support before seeking a waiver of Section 54.802(a)—the rule that allows the census blocks identified in the Petition to be identified as eligible for RDOF support. Indeed, the Commission has broad authority to waive *any* provision of its rules—including Section 54.802(a)—“in whole or in part, at any time” for good cause.³⁸

And WISPA’s preferred timing would needlessly delay the auction process. In its Order, the Commission opted for a limited window to challenge the Bureau’s preliminary list of eligible census blocks in order to avoid the burdens and delays that would come with a more drawn-out process.³⁹ If Charter waited to submit its Petition until the list of eligible areas is finalized and the Phase I auction process is underway, the Commission could not consider how to address the more than 2,000 census blocks at issue here without delaying or otherwise disrupting that process. There is nothing in the Commission’s rules that compels it do so.

WISPA’s other procedural claim—that Charter’s failure to file a petition for reconsideration somehow prohibits Charter from seeking a waiver—fares no better.⁴⁰ WISPA cites no authority at all for this objection (unsurprisingly, because Rule 1.3 contains no such requirement), and it makes little sense. Indeed, Rule 1.3 provides that the Commission may waive any provision of its rules “at any time,” and even on its own motion.⁴¹ The touchstone for granting waivers is good cause, not exhaustion of other remedies. Charter has shown that good cause exists

³⁷ *Id.* at 3.

³⁸ 47 C.F.R. § 1.3 (“The provisions of this chapter [*i.e.*, Chapter 1 of Title 47 of the Code of Federal Regulations] may be suspended, revoked, amended, or waived for good cause shown, in whole or in part, at any time by the Commission Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.”).

³⁹ *RDOF Order*, 35 FCC Rcd at 692-94 ¶¶ 14-15.

⁴⁰ *WISPA Comments* at 3-5.

⁴¹ 47 C.F.R. § 1.3.

to exclude the census blocks at issue here. Doing so will ensure that limited universal service support is not used to overbuild in areas of New York that are already slated to receive broadband coverage in the near future.

CONCLUSION

For the foregoing reasons, there is good cause to waive Section 54.802(a) of the Commission's rules as necessary to exclude from Phase I of the RDOF auction those census blocks in which Charter has a binding New York State obligation to deploy broadband services. Doing so will further the Commission's goals as well as serve the public interest.

Dated: April 28, 2020

Respectfully submitted,

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EXHIBIT A

Block ID**Awardee**

361019611004086	Armstrong Telecommunications
361019611004111	Armstrong Telecommunications
361219711002082	Armstrong Telecommunications
361019620003017	Armstrong Telecommunications
361019620003019	Armstrong Telecommunications
361019620003021	Armstrong Telecommunications
361019620003058	Armstrong Telecommunications
361019620003075	Armstrong Telecommunications
361019620003078	Armstrong Telecommunications
361019620003084	Armstrong Telecommunications
361019620003091	Armstrong Telecommunications
361019620003092	Armstrong Telecommunications
361019620003095	Armstrong Telecommunications
361019620003102	Armstrong Telecommunications
360179702002009	Clarity Fiber Solutions
360179702006019	Clarity Fiber Solutions
360239701002087	Clarity Fiber Solutions
361219704003016	Frontier Communications
361219704003017	Frontier Communications
361231505001035	Frontier Communications
361231505001036	Frontier Communications
361231505001046	Frontier Communications
361231505001058	Frontier Communications
361231505001059	Frontier Communications
360650241022042	Frontier Communications
360650241023035	Frontier Communications
361231505002077	Frontier Communications
360150101002042	Haefele TV Inc.
360110401004039	Hughes Network Systems, LLC
360110410001045	Hughes Network Systems, LLC
360110410001068	Hughes Network Systems, LLC
360110411001057	Hughes Network Systems, LLC
360110411003043	Hughes Network Systems, LLC
360110411003044	Hughes Network Systems, LLC
360130370003025	Hughes Network Systems, LLC
360130370003029	Hughes Network Systems, LLC
360130370003038	Hughes Network Systems, LLC
360130370003039	Hughes Network Systems, LLC
360130370003040	Hughes Network Systems, LLC
360130370003043	Hughes Network Systems, LLC
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