

September 10, 2018

Ms. Michele Brooks  
Regulations Team Lead  
Rural Development Innovation Center  
U.S. Department of Agriculture  
1400 Independence Ave. SW  
Stop 1522, Room 1562  
Washington, DC 20250

Subject: Docket No. RUS-18-TELECOM-0004

Dear Ms. Brooks:

I write to offer comments on the notice of inquiry (NOI) and request for comments (RFC) published by the USDA Rural Utilities Service (RUS) regarding the e-Connectivity Pilot created in section 779 of the Consolidated Appropriations Act of 2018 (Pub. L. 115-141). I commend RUS's interest in hearing from the public as it crafts the rules governing this important program and encourage your careful consideration of these comments and those submitted by broadband stakeholders in Maine.

Access to affordable, high-speed broadband is increasingly an economic development imperative for rural communities in Maine and across the country that are seeking to attract business investment, increase economic prosperity, and reverse outmigration by drawing in younger residents. This Pilot offers tremendous potential for catalyzing broadband investment in rural areas, so I am pleased to offer the following responses to this NOI and RFC.

*I. Defining "sufficient access"*

Given the importance of broadband to the economic future of rural America, the Pilot's "sufficient access" definition deserves special attention. The Pilot must not bypass rural areas where access and affordability of broadband service fails to actually and consistently meet the needs of employers, students, farmers, and telehealth patients. With this in mind, the term "sufficient access" should be understood to include metrics related to quality of service, affordability, and qualitative feedback from community and business stakeholders. Quality of service benchmarks should include a minimum-allowable data cap or usage allowance, as well as a maximum latency amount. These benchmarks should be set at levels needed to enable regular two-way video conferencing, support content creation, and common activities undertaken by rural businesses and remote workers connecting with clients and employers in urban centers. In addition, these benchmarks should support the connectivity needs for enabling seniors to age in place and the delivery of telehealth services. Both quality of service measures and the statutorily-defined 10/1 Mbps capacity should be measured at hours of peak usage and reevaluated on an ongoing basis. If a metric fails to hold up when the highest number of users are on a network, it fails to have practical meaning.

Affordability should also be noted in RUS's evaluation of whether an area has "sufficient access" to broadband. RUS should consider whether the annual urban rate survey conducted by the Federal Communication Commission (FCC) could be the basis of an affordability benchmark. When evaluating prices against a benchmark, RUS should use the cost of a standalone broadband subscription, rather than the portion of a bundled bill that an internet service provider (ISP) attributes to broadband. Additionally, the measured price should include any ISP-imposed fees that are not directly required by regulators or the law. Further, RUS should create a rebuttable presumption that open-access dark fiber projects are affordable due to the likelihood of competitive service options.

While quantitative measures should be the primary means for RUS to determine whether "sufficient access" exists, RUS should also consider any qualitative feedback submitted by community members, employers, economic development organizations, providers, and local governments—particularly those organizations and governments that have completed broadband plans—as part of an application. They can provide specific examples of whether economic development is being hindered by insufficient broadband availability.

Finally, although RUS is bound to the 10/1 Mbps standard for the Pilot's initial application window, RUS should strongly consider modernizing this threshold in subsequent years, as allowed under the law. In so doing, RUS should recognize the importance of adequate upload speeds for enabling content creators and employers and individuals working on increasingly ubiquitous cloud computing platforms to compete in the global economy from a rural address. Further, RUS's modernization of this standard should ensure that taxpayer funds are not spent building broadband infrastructure that will be obsolete prior to the end of its useful life.

## *II. Acquiring accurate broadband mapping data*

Existing federal broadband data is either too out-of-date or too imprecise to be useful to policymakers. Therefore, I support further data-gathering efforts by federal agencies and additional funding by Congress to improve the accuracy of broadband data on an ongoing basis. In the near-term, I recommend that RUS take advantage of additional sources of data beyond the National Broadband Map, including:

- a. Any ISP-submitted data that is more recent than the most recent National Broadband Map, including ISP data submitted indirectly via a state, county, or local government that has compiled such data. Any such data should represent actual end-user speeds during peak usage hours. This data should be discounted if the ISP has previously submitted inaccurate data to USDA.
- b. Any broadband infrastructure surveys or maps conducted by a state, county, or local government—or economic development organization—that can demonstrate maximum possible speeds based on the availability of certain types of infrastructure in a given location.
- c. Actual end-user speeds measured according to a methodologically-robust process that is resistant to gaming by ISPs and that does not reflect bottlenecks caused by equipment internal to the user's network.



### *III. Measuring project benefits and judging utility partnership viability*

When evaluating the likely benefits of a project, RUS should take note of the scope and depth of partnerships between the applicant and local governments, employers, anchor institutions, providers, and economic development organizations. When all of these stakeholders have input into a project, the odds of a successful network deployment likely increase. The presence of a digital inclusion plan paired with a network deployment is also likely to boost take rates and increase the likelihood of a self-sustaining network that creates a meaningful community and economic benefit. In addition to direct grant or loan funding, RUS should look at innovative financial models and public-private partnerships that maximize the leveraging of public funds to spur private sector investment in broadband infrastructure.

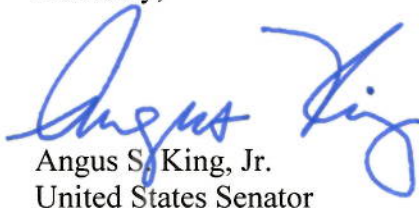
Local utility partnerships, including electric, water, and sewer utilities should also be viewed favorably, given the long history of success of the local utility model in bringing other vital infrastructure to rural America. RUS should look to support efforts to deploy open access “dark” fiber optic networks that support both digital inclusion and advanced smart grid technologies. These types of telecommunications-utility partnerships have great potential to maximize the asset life of the RUS investment by enabling deployment of other complementary smart infrastructure and opening up the provision of digital services to compete from a broad array of internet service providers, resulting in greater choice and lower costs.

### *IV. Additional feedback*

RUS should encourage the best use of limited Pilot funding by coordinating with states that have completed robust broadband planning efforts. This coordination could be achieved by allowing states to apply for RUS grant funding that they would be allowed to pass through to projects the states select, with appropriate eligibility rules and regulations. In order to retain the program’s financial controls, loan funding would be excluded from this option and states would be liable to reimburse RUS for any funds used for purposes outside RUS’s eligibility guidelines.

Thank you for your consideration of these comments and your efforts to ensure that the e-Connectivity pilot improves broadband infrastructure in rural America. If you have any questions about this letter, please direct your staff to contact Adam Lachman or Will Woodworth in my office at 202-224-5344.

Sincerely,



Angus S. King, Jr.  
United States Senator