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VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: In re Connect America Fund, WC Docket 10-90

Dear Ms. Dortch:

The Association of Missouri Electric Cooperatives, Midwest Energy & Communications, HomeWorks Tri-County Electric Cooperative, Alger Delta Cooperative Electric Association, Great Lakes Energy, Indiana Electric Cooperatives, the Arkansas Electric Cooperatives, Inc., National Rural Electric Cooperative Association (“NRECA”), NTCA–The Rural Broadband Association (“NTCA”), and the Utilities Technology Council (“UTC”) (collectively, the “Rural Coalition”) hereby submit the following to address certain arguments and proposals raised in Reply Comments and other submissions regarding the Federal Communications Commission’s (“Commission”) Public Notice¹ (the “*Public Notice*”) concerning the Connect America Fund Phase II Auction (“CAF Phase II Auction” or the “Auction”) procedures. Specifically, the Rural Coalition is concerned that parties in the proceeding have proposed recommendations that, if adopted, would reduce accountability and potentially undermine an efficient and fair auction process by delaying (or preventing entirely) the Commission’s review of information essential to confirming the technical and financial qualifications of entities placing bids in the CAF Phase II Auction. As discussed below, the Commission should reject these efforts and instead should strengthen the upfront short-form review.

Validating Technical Capability to Perform

First, the Rural Coalition continues to urge the Commission to ensure all bidders can meet their performance requirements before bidding in the auction. Absent adequate protections, unqualified entities could win support and ultimately fail to deliver on their commitments. Even

¹ *Comment Sought on Competitive Bidding Procedures and Certain Program Requirements for the Connect America Fund Phase II Auction*, Public Notice, 32 FCC Rcd 6238 (2017) (“PN”).

if CAF support could be recovered after a bidder fails to perform, unserved communities would still be left behind.²

The Rural Coalition thus has made the reasonable suggestion that the Commission require applicants intending to rely on wireless spectrum to provide propagation maps of their planned coverage areas in their short-form applications.³ Such a requirement would reflect the unique topographical and geographical conditions in rural areas, which can present particular difficulties for wireless providers. Commission staff (or a third-party such as the Universal Service Administrative Company) would review the maps both to ensure that bidders have given adequate consideration to these location-specific challenges and to geographic variation, and to determine whether such bidders are thus prepared to meet their public interest requirements.

Certain commenters raised concerns about this proposal, arguing that preparing propagation maps would be time consuming or otherwise burdensome for providers;⁴ that the submission of propagation maps at the short-form stage is unnecessary because the Commission's long-form application already ensures that winning bidders meet build-out requirements;⁵ and that this requirement, if adopted, should be applied in a technology-neutral manner to all bidders, not just spectrum-based bidders.⁶ With one exception (technology neutrality, which is easily addressed), these arguments are overstated, have been empirically denied, or are based on logic that the Commission already has rejected.

As an initial matter, to promote and ensure technology neutrality, the Rural Coalition supports a requirement that all providers, irrespective of technology, submit network maps with their short-form applications.⁷ Thus, for example, the Rural Coalition does not oppose a requirement that fiber-based applicants submit in their short-form applications maps of proposed deployment routes of main-line fiber optic cable to demonstrate fiber availability inside of eligible census block locations. Similarly, to the extent its members are likely to leverage spectrum resources as part of certain CAF Phase II bids, the Rural Coalition recognizes

² Comments of the Rural Coalition, WC Docket No. 10-90, at 15-18 (Sept. 18, 2017) ("Rural Coalition Comments").

³ *Id.* at 19.

⁴ *See, e.g.*, Reply Comments of Wireless Internet Service Providers Association (WISPA), WC Docket No. 10-90, at iii (Oct. 18, 2017) ("WISPA Reply Comments"); Reply Comments of AT&T, WC Docket No. 10-90, at 19-20 (Oct. 18, 2017) ("AT&T Reply Comments").

⁵ *See, e.g.*, WISPA Reply Comments at iii; Reply Comments of CTIA, WC Docket No. 10-90, at 4 (Oct. 18, 2017) ("CTIA Reply Comments").

⁶ *See, e.g.*, WISPA Reply Comments at iii.

⁷ *Id.*

propagation maps provide a necessary and useful resource for the Commission to confirm bidders can do what they purport in their applications.⁸

Moreover, wireless bidders are already required to establish proof in their short-form applications that they have sufficient spectrum resources to satisfy their public interest obligations, including to provide service to all required locations within the applicable census block groups.⁹ Likewise, all providers must certify that they have investigated and evaluated “all technical and marketplace factors that may have a bearing on the level of [CAF] Phase II support” they can receive, as well as their ability to “build and operate facilities” in accordance with their obligations.¹⁰ Commenters do not explain how such evidence and certifications could be supplied in the absence of a relatively detailed upfront assessment and validation of network capabilities, particularly when one considers the unique geographical and topographical conditions that have often contributed to the lack of service in rural areas in the first instance. Requiring propagation maps would involve substantially similar diligence—and would take the existing short-form requirements to their logical extension—without imposing a significant burden on providers.

Further, many, if not most, wireless providers will have to conduct surveys to determine whether they can in fact serve a given census block in any event. Indeed, WISPA has explained that its members cannot “determine with any certainty what potential customers will be or would be readily served . . . until an on-site technical assessment is made.”¹¹ To ensure that CAF Phase II support is allocated to providers that are actually capable of delivering service to unserved communities, the Commission must therefore require that providers perform all such preparatory work prior to bidding.

Despite arguments to the contrary, the submission of network maps at the long-form stage is insufficient to address concerns about accountability and capability to perform.¹² That is so because it would be too late for another qualified bidder to win support for the area (or for those resources to be deployed elsewhere), leaving that community (and possibly others too)

⁸ Some Rural Coalition members may also leverage spectrum-based technologies. Indeed, a sizeable number of NTCA members, for example, hold spectrum licenses, and of those that do, the vast majority are offering some form of fixed wireless broadband today. *See* NTCA—THE RURAL BROADBAND ASSOCIATION, NCTA 2016 WIRELESS SURVEY REPORT 3 (January 2017), available at <https://www.ntca.org/images/stories/Documents/Advocacy/SurveyReports/2016wirelessurveyreport.pdf>. Moreover, at least two NTCA members that received awards in the Rural Broadband Experiments (out of 16 total winners) are noted as using “fixed wireless” as part of their deployments. *See Rural Broadband Experiments*, FCC.GOV, <https://www.fcc.gov/general/rural-broadband-experiments> (last updated Dec. 14, 2016).

⁹ *See* 47 C.F.R. § 54.315(a)(6); *PN*, 32 FCC Rcd at 6250 ¶¶ 37-38.

¹⁰ *PN*, 32 FCC Rcd at 6257 ¶ 62; *see also* Rural Coalition Comments at 19.

¹¹ Comments of WISPA, WC Docket No. 11-10, at 11-12 (Oct. 10, 2017).

¹² AT&T Reply Comments at 20-21; WISPA Reply Comments at iii; CTIA Reply Comments at 4.

behind. Arguments that network maps should be required only at the long-form stage are based on the same logic that the Commission correctly rejected when it proposed to adopt a short-form application screen in the first place.

Furthermore, the experience of New York's Broadband Program ("the New York Broadband Program") illustrates that commenters' concerns with the submission of network maps are misplaced. The Commission previously allocated \$170.4 million of CAF Phase II support to be distributed through the New York Broadband Program,¹³ which, like this proceeding involves distribution via auction. In the New York Broadband Program, for Phase II, New York State required all applicants to submit in their RFPs "[a] Network Diagram demonstrating that the proposed network addresses Unserved and/or Underserved Units within the CBs."¹⁴ New York adopted a substantially similar requirement for Phase III,¹⁵ which expands the Program to "all remaining Unserved and Underserved areas, including Census Blocks eligible for support" through the CAF program.¹⁶

The Commission approved the New York Broadband Program requirements, and there is nothing to suggest that those requirements have been burdensome for providers, or that the network map requirement specifically has deterred participation. To the contrary, a diverse set of providers were awarded support in Phase II of the New York Broadband Program,¹⁷ and if the network map requirement had been burdensome, New York would not have adopted it again for Phase III.

The Commission should adopt a similar requirement here, as the Rural Coalition has proposed, and similarly extend it to all applicants in order to ensure that all applicants are capable of following through on their bids. Indeed, this proposal is simple common sense: If an entity is bidding in an area, it needs to have conducted the due diligence to understand the cost of building out in that area before bidding, and part of that exercise is the creation of network maps.

¹³ *In re Connect America Fund*, Order, 32 FCC Rcd 968, 982 ¶ 38 (2017).

¹⁴ New York State Broadband Program Office, New NY Broadband Program: Phase 2 Request for Proposal Guidelines 25 (2016), <https://nysbroadband.ny.gov/sites/default/files/documents/new-ny-broadband/New-NY-Broadband-Program-Phase-2-RFP-Guidelines-8-3.pdf>.

¹⁵ New York State Broadband Program Office, New NY Broadband Program: Phase 3 Request for Proposal Guidelines 36 (2017), https://nysbroadband.ny.gov/sites/default/files/broadband_-_phase_3_rfp_guidelines-final_0.pdf.

¹⁶ *Id.* at 5-6.

¹⁷ *Phase 2 Awards*, NYSBROADBAND.NY.GOV, <https://nysbroadband.ny.gov/new-ny-broadband-program/phase-2-awards> (last visited Nov. 17, 2017).

Precluding Speculative Bids

Second, the Commission should not risk scarce universal service resources on speculative, unproven uses of network technologies. The Commission has a statutory and fiduciary obligation to ensure that it makes efficient use of universal service resources.¹⁸ The cost of the universal service programs is ultimately borne by consumers and businesses that pay to fund those programs, and the Commission has a corresponding obligation to exercise fiscal responsibility by avoiding excessive and wasteful distribution of such resources.¹⁹

Here, that obligation extends to ensuring that bidders are in fact capable of meeting the requirements of the speed and latency tiers in which they bid. Doing so will help preserve the integrity of the auction and encourage active participation (and competition), while also minimizing the risk of default.²⁰ Equally importantly, ensuring that bidders are capable of meeting their public interest obligations (including the speed and latency requirements of their bidding tier) is also necessary to ensure prevailing bidders do not ultimately provide subpar service in rural communities—which have been waiting for years for the CAF Phase II Auction to support the delivery of reasonably comparable service.²¹ The Rural Coalition thus has urged the Commission to preclude (or adopt a rebuttable presumption against) providers' bidding in speed and latency tiers for technologies that do not currently achieve those performance characteristics in rural areas.²² Put another way, if no provider has ever shown it can use a particular technology to achieve a particular service level, it makes no sense to gamble CAF resources on a claim that such technology can suddenly leap to unprecedented levels of performance.

¹⁸ Rural Coalition Comments at 17.

¹⁹ *In re Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 2152, 2161 ¶ 24 (2017).

²⁰ See Reply Comments of the Rural Coalition, WC Docket No. 10-90, at 10 (Oct. 18, 2017) (“Rural Coalition Reply Comments”) (“[This approach] would also prevent bidders from gaming the CAF Phase II Auction by overpromising on their speed or latency capabilities in order to gain an advantage in the Auction, and then failing to deliver.”). Such measures of capability to achieve requisite network performance levels must include an examination of key network engineering assumptions, such as the Busy Hour Offered Load that represents the anticipated network usage by subscribers.

²¹ See *PN*, 32 FCC Rcd at 6279, Statement of Chairman Ajit Pai.

²² State legislators also have recognized the need for similar protections. See Letter from Wayne Schmidt, State Senator, 37th District, et al., to Chairman Ajit Pai, FCC, and Commissioners, WC Docket No. 10-90 (Oct. 17, 2017) (“[W]e . . . urge the FCC to ensure that providers willing to serve an area with 1 Gbps and 100 Mbps broadband service, have a real chance to do so. To this end, we encourage the FCC to adopt sufficient upfront reviews and safeguards to ensure that only those capable of truly delivering this service to all interested consumers in these areas are able to participate in the auction. Absent such protections, we are concerned that the Connect America Fund Phase II Auction may not fulfill its potential of connecting these unserved communities.”).

Several commenters opposed this common-sense requirement. For example, one provider argued that this preclusion was unnecessary given the certification requirement and the threat of forfeitures in the event of default.²³ Others argued that this proposal was inconsistent with the principle of technology neutrality.²⁴ Another argued that even if certain technologies cannot achieve high speed or low latency today, they will be able to do so in the future, consistent with the Commission's final deployment milestone in 2024.²⁵ These arguments are misguided.

If providers are allowed to bid in unattainable tiers based on the potential for speculative technological advances, qualified bidders may be discouraged from participation in the Auction, and Commission staff will face increased administrative burdens. Even the most recent technological developments have not solved longstanding problems inherent in certain technologies. For example, Vantage Point has observed that despite recent developments, geostationary satellites continue to have significant capacity constraints.²⁶ The Commission should not permit bids that rely on contested (but not yet tested) assumptions and projections about how technologies will evolve.

This common-sense requirement is not intended to discourage innovation. It is merely to say that limited universal service resources should not be gambled on untested technological theories. In this proceeding specifically, the Commission should not risk wasting CAF funds on speculative technologies with no proven track record of performance at a given level. Due to the risk that even well-intentioned providers relying on technologies in pilot or beta-testing could make unrealistic or uninformed assumptions or projections about their technological capabilities, the Commission should limit bidding in certain tiers by providers utilizing technologies that have extremely little or no commercial presence in those tiers today. Alternatively, at minimum, the Commission should adopt a rebuttable presumption that bidders may not use technologies that have not reliably delivered the requisite speed or low latency in rural areas.²⁷

Validating Financial Capability to Perform

Third, the Commission's proposed financial screens also are necessary to ensure that bidders are qualified. Several parties sought to water down (or all but eliminate altogether) the

²³ See AT&T Reply Comments at 20.

²⁴ See, e.g., *id.* at 21.

²⁵ See Reply Comments of Verizon, WC Docket No. 10-90, at 6 (Oct. 18, 2017) ("Verizon Reply Comments").

²⁶ See VANTAGE POINT SOLUTIONS, SATELLITE BROADBAND REMAINS INFERIOR TO WIRELINE BROADBAND 8 (2017) (attached to Letter from Larry Thompson, CEO, Vantage Point Solutions, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (Sept. 5, 2017)).

²⁷ See Rural Coalition Reply Comments at 11.

financial screens proposed for the short-form application.²⁸ But those screens, which allow the Commission to make a reasonable initial assessment of each bidder's financial health and well-being, much like the technical-qualification screens, are necessary to preserve auction integrity and prevent against default. Indeed, the financial screens serve the additional purpose of ensuring not only that the network subject to the bid will be built, but also that it will be maintained for the benefit of consumers thereafter. Indeed, given the longer-term commitment of limited CAF resources in this auction, it is prudent for the Commission to ensure the basic financial qualifications of bidders to move forward with the contemplated investments and to guard against potential default—particularly from those that have no track record either of performance in the specific context of widespread rural infrastructure deployment or, even more specifically, with receipt and use of universal service support.

In its *Public Notice*, the Commission proposed a five-part financial screening test that would not actually disqualify any applicants but would merely flag certain applicants for a more stringent review of their financial qualifications.²⁹ The Rural Coalition generally supported the notion of such a threshold assessment of financial qualifications, based upon the lessons learned from the Rural Broadband Experiment process and concerns about sustainability.³⁰ Nonetheless, other parties appear focused on only near-term or immediate measures of financial status, and thus have urged a simplistic look only at one current operating metric (*e.g.*, EBITDA margin) or replacement of the screen with a certification regarding recent cash flows.³¹ Such short-term measures, however, miss the mark in focusing solely on the one-time act of *deployment*, and failing to consider ongoing *sustainability*: Once the network is built, consumers will need access to affordable and robust services atop it for years (or even decades) to come. Thus, there must be some reasonable measure of financial wherewithal not only to build the network, but to sustain operations and deliver reasonably comparable services at reasonably comparable rates leveraging that asset for its useable life.

Some parties further argue that entities that have been providing voice and broadband for at least two years should be subject to no financial screen at all.³² Although this argument has some initial appeal in that it accounts for the Rural Coalition's concern with providers that lack a proven track record and sustained operations, the Commission should not dispense altogether with a reasonably tailored financial screen of all those applying to participate in the CAF Phase II Auction. Rather, if the Commission finds these arguments persuasive, it could consider a few

²⁸ See WISPA Reply Comments at 15; Reply Comments of GeoLinks, WC Docket No. 10-90, at 3 (Oct. 18, 2017).

²⁹ *PN*, 32 FCC Rcd at 6256 ¶ 59.

³⁰ Rural Coalition Reply Comments at 15 (citing *PN*, 32 FCC Rcd at 6256 ¶ 58).

³¹ See Comments of WISPA, WC Docket No. 10-90, at 23-24 (Sept. 18, 2017); Comments of the USTelecom Association, WC Docket No. 10-90, at 4-5 (Sept. 18, 2017).

³² See, *e.g.*, AT&T Reply Comments at 18-19; Verizon Reply Comments at 3-4.

adjustments to the financial screen as initially proposed to strike a more effective balance between no screen at all and one that is too stringent in referring applications for further review. Specifically, as the Rural Coalition previously suggested, the capital-intensive nature of broadband network deployment would advise against relying on a current assets-to-liabilities ratio in the screen, and also warrants altering the ratio of total equity to total capital to more properly reflect the specific challenges of investing in rural areas.³³

Sincerely,

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³³ Rural Coalition Reply Comments at 16.