

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In The Matter of)	
)	AU Docket No. 17-182
Connect America Fund)	WC Docket No. 10-90
)	

COMMENTS OF THE RURAL COALITION

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EXECUTIVE SUMMARY

The Rural Coalition submits these comments in response to the Federal Communications Commission's (the "Commission") Connect America Fund Phase II Auction ("CAF Phase II Auction" or the "Auction") Public Notice. The CAF Phase II Auction represents a unique and long-awaited opportunity to close the digital divide and connect unserved areas with broadband-capable networks. To ensure the successful and sustainable achievement of universal service in these areas, the Rural Coalition urges the Commission to take additional measures to encourage participation from providers of all sizes, impose some additional reasonable screening measures to ensure that only qualified bidders participate, and adopt rules to facilitate a fair and equitable auction. These additional requirements will build on the Commission's previously established blueprint for a successful Auction.

First, the Commission should take additional steps to encourage providers of all sizes to participate in the Auction. Because of the complexity of this Auction, and given their relatively small staffs, smaller providers will almost certainly be unable to participate without retaining third-party consultants, outside experts, and/or counsel. The Rural Coalition thus urges the Commission to consider means of simplifying the Auction procedures and, as a separate measure, to adopt a flexible approach to its anti-collusion rules, including, with respect to communications with third parties, a certification approach that is consistent with the anti-collusion rules that New York adopted for its auction.

Second, the Rural Coalition is concerned that the CAF Phase II Auction, as structured, will not utilize the entire budget and thus will leave many unserved households behind. Rural communities have been waiting for the buildout of broadband networks since even before 2011, when the Commission began this process, and the need for access to funding has become only more acute as demand has increased and rural America increasingly finds itself left behind. It

appears, however, that under the Commission's current proposal, there could be relatively common scenarios where eligible bids below the Auction reserve do not "win" because multiple bidders from the prior round drop. This result is not in the public interest, and the Commission should consider mechanisms to prevent it from occurring.

Finally, the Rural Coalition supports the accountability measures that the Commission has proposed, but believes that additional protections are necessary to guard against waste, fraud, and abuse of the \$1.98 billion allocated to the Auction. The Rural Coalition thus proposes additional short-form requirements that build on concerns that the Commission has already identified; additional eligibility preclusions that are amply supported by public data as to what performance (speed-latency) characteristics are possible with different technologies; and the adoption of ex ante penalties for non-compliance, which should deter bidders from gambling with finite public funds.

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The Association of Missouri Electric Cooperatives, Midwest Energy Cooperative, Great Lakes Energy, Home Works, Indiana Electric Cooperatives, Alger Delta, the Arkansas Electric Cooperatives, Inc., National Rural Electric Cooperative Association (“NRECA”)¹, NTCA—The Rural Broadband Association (“NTCA”)², and the Utilities Technology Council (“UTC”)³

¹ The National Rural Electric Cooperative Association (NRECA) is the national service organization for America’s Electric Cooperatives. The nation’s member-owned, not-for-profit electric co-ops constitute a unique sector of the electric utility industry—and face a unique set of challenges. NRECA represents the interests of the nation’s more than 900 rural electric utilities responsible for keeping the lights on for more than 42 million people across 47 states. Electric cooperatives are driven by their purpose to power communities and empower their members to improve their quality of life. Affordable electricity is the lifeblood of the American economy, and for 75 years electric co-ops have been proud to keep the lights on. Because of their critical role in providing affordable, reliable, and universally accessible electric service, electric cooperatives are vital to the economic health of the communities they serve.

America’s Electric Cooperatives serve 56 percent of the nation, 88 percent of all counties, and 12 percent of the nation’s electric customers, while accounting for approximately 11 percent of all electric energy sold in the United States.

² NTCA represents nearly 850 independent, community-based telecommunications companies and cooperatives and more than 400 other firms that support or are themselves engaged in the provision of communications services in the most rural portions of America. All of NTCA’s service provider members are full service rural local exchange carriers and broadband providers, and many also provide video, mobile wireless, or other advanced services to rural American consumers and businesses.

³ Created in 1948, UTC is the global trade association for the telecommunications and information technology interests of electric, gas, and water utilities and other critical infrastructure industries (“CII”), such as pipeline companies. Its members include large investor-owned utilities that serve millions of customers, often across multi-state service territories; and its members include smaller cooperative or municipal utilities that may serve only a few thousand customers in rural areas or isolated communities. All of these members own, manage or control extensive private internal communications networks that they use to support the safe, reliable and efficient delivery of essential services to the public at large. These communications networks are used both for voice and data communications for routine dispatch, as well as emergency response during service restoration in the aftermath of hurricanes, storms, and other natural disasters, which can affect large areas for extended periods. An increasing number of utility members of UTC are providing broadband to isolated communities or remote areas; and there are

(collectively, the “Rural Coalition”) hereby submit these comments in response to the Federal Communications Commission’s Public Notice⁴ (the “*Public Notice*”) on the Connect America Fund Phase II Auction procedures.

INTRODUCTION AND BACKGROUND

The Connect America Fund Phase II Auction represents a unique opportunity and a significant milestone in the Commission’s longstanding effort to promote the goals of universal service by connecting unserved areas of the country with broadband. Rural communities have been waiting since even before 2011, when the Commission began this process, and the need for access to funding has become only more acute as demand increases and rural America increasingly finds itself left behind.⁵ The Rural Coalition thus underscores the urgent need for the Commission to conduct the CAF Phase II Auction as soon as possible.

The Rural Coalition includes entities (*e.g.*, electric cooperatives, telco cooperatives, and other locally based telcos) that are committed to rural America and are focused on addressing the need for broadband in unserved rural areas.⁶ These entities are attempting, where possible, to

additional utilities that are either interested in offering broadband services or are providing wholesale capacity services to enable the delivery of broadband services to unserved areas. Hence, UTC has been an active participant throughout the Connect America Fund proceedings to promote opportunities for utilities to access funding to provide broadband to unserved areas.

⁴ *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*”).

⁵ See Letter from Sen. Claire McCaskill, U.S. Senate, to Chairman Ajit Pai, FCC (Aug. 18, 2017) *available at* <https://ecfsapi.fcc.gov/file/1082110078702/2017-08-18%20Letter%20to%20Chairman%20Pai.pdf>.

⁶ For example, Co-Mo Electric Cooperative provides broadband through its subsidiary, Co-Mo Connect; Midwest Energy Cooperative provides broadband through its subsidiary, Midwest Energy & Connections; the North Arkansas Electric Cooperative provides broadband through its subsidiary, Next; the Ozarks Electric Cooperative provides broadband through its subsidiary, OzarksGo; and Ralls Electric Cooperative provides broadband through its subsidiary, Ralls Technologies. Other cooperatives have begun the planning process. See, *e.g.*, Curt Kovener, *Jackson County REMC to Bring Broadband Internet to Rural Areas*, CROTHERSVILLE TIMES (June 28, 2017), <http://crothersvilletimes.com/?p=8100>.

deploy broadband to promote economic growth, improve education, and enhance the quality of health care in the rural communities that they serve.⁷

Broadband access is increasingly essential to economic growth and competitiveness, just as electricity expansion was crucial to the development of rural America at the turn of the last century.⁸ The rural electric cooperatives and telephone companies that comprise the Rural Coalition recognize this reality. They have borne witness to significant and unprecedented population declines.⁹ Robust broadband helps to attract competitive business to rural areas, allows people to telecommute from their homes, and helps rural communities support advanced applications for business, education, and health care, all of which help to stem population losses by making rural communities more livable.¹⁰

⁷ ERICSSON, ARTHUR D. LITTLE & CHALMERS UNIV. OF TECH, SOCIOECONOMIC EFFECTS OF BROADBAND SPEED 2 (Sept. 2013), *available at* <https://www.ericsson.com/res/thecompany/docs/corporate-responsibility/2013/ericsson-broadband-final-071013.pdf>; *see also* *What Is Smart Rural Community?*, NTCA.ORG, <http://www.ntca.org/smart-rural-community/what-is-a-smart-rural-community.html> (last visited Sept. 12, 2017) (“Smart Rural Community (SRC) comprises programming relating to and promoting rural broadband networks and their broadband-enabled applications that communities can leverage to foster innovative economic development, education, health care, government services, public safety and other vital public functions.”).

⁸ FCC, CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN 3 (Mar. 17, 2010), <https://transition.fcc.gov/national-broadband-plan/national-broadband-plan.pdf> (“Today, high-speed Internet is transforming the landscape of America more rapidly and more pervasively than earlier infrastructure networks. Like railroads and highways, broadband accelerates the velocity of commerce, reducing the costs of distance. Like electricity, it creates a platform for America’s creativity to lead in developing better ways to solve old problems.”).

⁹ John Cromartie, *Rural Areas Show Overall Population Decline and Shifting Regional Patterns of Population Change* (Sept. 5, 2017), <https://www.ers.usda.gov/amber-waves/2017/september/rural-areas-show-overall-population-decline-and-shifting-regional-patterns-of-population-change>.

¹⁰ *See* NTCA—THE RURAL BROADBAND ASSOCIATION, NTCA 2015 BROADBAND/INTERNET AVAILABILITY SURVEY REPORT 4 (July 2016), <https://www.ntca.org/images/stories/Documents/Advocacy/SurveyReports/2015ntca-broadbandsurveyreport.pdf>; Letter from Rebekah Goodheart, Counsel for the Association of Missouri Electric Cooperatives et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (July 26, 2017); *see also* BRIAN WHITACRE ET AL., NAT’L AGRIC. & RURAL DEV. POLICY CTR., RURAL BROADBAND AVAILABILITY AND ADOPTION: EVIDENCE, POLICY CHALLENGES, AND OPTIONS 73 (Mar. 2013), *available at* <http://www.nardep.info/uploads/BroadbandWhitePaper.pdf> (finding that counties with a high level of broadband adoption—those in which 60 percent or more of the households had a wired high-speed internet connection—experienced higher income growth and saw a smaller increase in unemployment rates than did counties that did not reach the 60 percent threshold).

Many Rural Coalition members are deploying fiber deeper into communications networks to ensure sufficient capacity now and in the future; these high-capacity networks, many of which are fiber to the home, are designed efficiently to scale and support communications needs for businesses, schools, hospitals, and residential consumers as demand continues to increase in the coming decades. The Rural Coalition's members have achieved take rates for residential broadband services upwards of 70%.¹¹ Indeed, consumers in rural areas subscribe to higher-speed packages even when lower-speed packages are available, showing that rural consumers need and want access to broadband services that are reasonably comparable to the level of services in urban areas. The success of the members of the Rural Coalition in providing broadband reflects the pent-up demand that exists in rural areas, where consumers will subscribe to broadband services that are truly robust, affordable, reliable, and, as the Communications Act envisions, reasonably comparable to services in urban areas.

However, it is difficult to deploy in remote and sparsely populated areas where the customer-per-mile ratio is low and topography challenges are often daunting. Without access to support, Rural Coalition members will be unable to deploy broadband into these high cost areas in and near their communities. The CAF Phase II Auction offers rural providers the opportunity to do just that. Accordingly, the Rural Coalition welcomes the Commission's progress on the CAF Phase II Auction, and submits its comments in an effort to ensure that the Auction realizes its full potential.

As described more specifically below, the Rural Coalition suggests certain modifications that will both promote smaller providers' participation in the Auction and strengthen

¹¹ *In re Connect America Fund ETC Annual Reports and Certification*, WC Docket Nos. 10-90 & 14-58, Opposition to Petition for Reconsideration of Hughes Network Systems, LLC 7 (May 18, 2017); NTCA 2015 Broadband Survey Report, *supra* note 10, at 7.

accountability measures, including the Commission’s short-form review, that guard against waste, fraud, and abuse. The Rural Coalition remains concerned about the significant potential that bidders will fail to deliver the level of broadband services that they propose to provide when they are bidding for access to funding.

Finally, despite requests to reopen the decision about the weighting,¹² the Commission need not—and should not—do so.¹³ The weighting methodology was the product of several years of deliberation by the Commission and substantial input of a broad cross-section of stakeholders representing entities of all kinds. This collaborative process ultimately produced an auction format that will allow providers utilizing all types of technologies to participate, while still enabling the Commission to obtain the best “bang for the buck.” Revisiting the methodology now would only delay the Auction, to the detriment of thousands of rural consumers who have had the promise of improved broadband service delayed for too long.¹⁴

The Commission’s weighting methodology does not treat certain technologies or providers unfairly. It simply recognizes the different capabilities of various technologies while also giving all providers a fair shot at obtaining support by bidding competitively. As Chairman Pai correctly stated in March, “[t]oday, we adopt auction weights designed to give every bidder—no matter what technology they use—a meaningful opportunity to compete for federal funds, while ensuring the best value for the American taxpayer.”¹⁵

¹² See Letter from Jennifer A. Manner, Senior Vice President, Regulatory Affairs, Hughes, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (Aug. 29, 2017) (advocating adjustments to bid weights).

¹³ *In re Connect America Fund*, Report and Order and Order on Reconsideration, 32 FCC Rcd 1624 (2017) (“*Phase II Auction FNPRM Order*”).

¹⁴ See Letter from Sen. Claire McCaskill, U.S. Senate, to Chairman Ajit Pai, FCC (Aug. 18, 2017).

¹⁵ *Phase II Auction FNPRM Order*, 32 FCC Rcd at 1665 (Statement of Chairman Pai).

I. The Rural Coalition Urges the Commission to Consider Steps to Simplify the Auction and Take a Flexible Approach to Its Anti-Collusion Rules to Encourage Participation by Smaller Providers.

A. The Auction Design’s Complexity May Deter or Discourage the Participation of Smaller Providers.

The CAF Phase II Auction will be the Commission’s first reverse descending-clock auction to distribute federal universal service support. The Auction thus presents a unique opportunity to attract the participation of companies “that have never before received universal service funding” such as “small competitive providers and electrical co-operatives that want to bring fiber to neighbors currently on the wrong side of the divide.”¹⁶ Moreover, the areas that are eligible to receive support include areas unserved by fixed broadband—*i.e.*, rural, high-cost, and low-density areas.¹⁷ Hence, for this auction to be successful, smaller providers *need* to participate. As described above, the Rural Coalition members are not national players, but rather community-based telecommunications providers, electric co-ops, and utilities that serve smaller, regional areas—and who are excited about the opportunity to deploy robust broadband networks to their communities that, absent support, have been cost-prohibitive to serve to this point. But the Rural Coalition also is concerned that this Auction’s complexity, coupled with the Commission’s anti-collusion rules, may jeopardize its members’ participation.¹⁸

It is highly likely that a large percentage of the CAF Phase II Auction participants—including those that already are receiving universal service—will never have participated in a

¹⁶ *PN*, 32 FCC Rcd at 6279 (Statement of Chairman Pai).

¹⁷ In particular, eligible areas include areas where incumbent local exchange carriers declined support, the areas deemed highest cost by Connect America Cost Model (“CACM”), and areas carved out from the rural broadband experiments. *See PN*, 32 FCC Rcd at 6240 ¶¶ 5-7; *see also In re Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17,663, 17,732 ¶ 179 (2011) (“*Connect America Fund First Report and Order*”) (“In areas where the incumbent declines a state-level commitment, we will use a competitive bidding mechanism to distribute support.”).

¹⁸ *See* 47 C.F.R. § 1.21002.

Commission auction previously. And, even for those parties that have participated in spectrum auctions or the Rural Broadband Experiments proceeding, the CAF Phase II Auction will be extremely complex, with providers bidding in performance tiers against providers bidding to offer service in different service tiers and with various different technologies in geographies across the country. Moreover, this Auction also permits providers to change bidding tiers mid-auction and to engage in package bidding—and is structured to include the self-selection of geographic areas. Thus, it is essential that the Commission at every turn consider ways to simplify the Auction design in a manner that will enable small businesses to participate meaningfully without undermining the process by which support can be distributed at efficient levels. The Rural Coalition looks forward to further discussions with the Commission and other stakeholders about how the design and ensuing processes can be simplified to enable substantial participation by parties of all sizes.

B. The Commission Should Take a More Flexible Approach to the Anti-Collusion Rules to Permit Small Providers to Retain the Same Third Parties.

Even with some streamlining and simplification, the retention of consultants, experts, and/or lawyers (many of whom have substantial expertise in cost and engineering studies, bidding strategies, and Commission procedures more generally) will almost certainly be a necessity. And, the Commission should take pains to ensure that the anti-collusion rules do not preclude smaller companies from doing so. In previous auctions, the Commission addressed the application of its anti-collusion rules to communications with consultants, experts, and lawyers during competitive bidding periods. In the incentive auction, for example, the Commission published a guidance specifically addressing this issue.¹⁹ There, the Commission correctly

¹⁹ See *Guidance Regarding the Prohibition of Certain Communications During the Incentive Auction*, Public Notice, 30 FCC Rcd 10,794 (2015) (“*Incentive Auction Guidance*”). The Rural Coalition also supports the

identified the legitimate interest that bidding parties might have in communicating information to, among others, counsel and consultants:

During the period the prohibition on certain communications is in effect, covered parties may want or need to communicate bids or bidding strategies to third parties such as counsel, consultants or lenders. The rule does not prohibit such communications, provided that the covered entity takes any steps necessary to prevent the third party from becoming a conduit for communicating bids or bidding strategies to other covered parties.²⁰

The Commission noted that “[f]or third parties that may advise multiple licensees on bids or bidding strategies, such as attorneys or auction consultants, firewalls and other compliance procedures should be implemented to help prevent such third parties from becoming conduits,”²¹ but cautioned “that an individual practitioner that holds bids or bidding information of more than one covered party presents a greater risk of engaging in [a prohibited] communication.”²²

The *Public Notice* requests comment on whether it should follow the same approach here.²³ The Commission should adopt a flexible approach to the application of the prohibited communications rule, and specifically should permit small business participants to retain, on an

Commission’s determination that its anti-collusion rules will take effect for this Auction with the filing of short-form applications. *See PN*, 32 FCC Rcd at 6246-47 ¶¶ 23-28. As discussed below, to the extent that the Commission holds training webinars and provides guidance regarding the auction—steps that the Rural Coalition supports—it should do so before the short-form deadline, so that smaller providers may take advantage of these materials and resources collectively, without inadvertently violating the prohibited communications rule. *See, e.g., CAF II Auction Process Webinar*, <https://www.fcc.gov/news-events/events/2017/09/caf-ii-auction-process-webinar> (last visited Sept. 10, 2017).

²⁰ *Incentive Auction Guidance*, 30 FCC Rcd at 10,798 ¶ 12.

²¹ *Id.* at 10,798 ¶ 13.

²² *Id.* at 10,800 ¶ 15. The Commission expressly did not find that multiple bidders’ retaining the same individual practitioner would constitute a per se violation of the prohibited communications rule, but effectively warned that parties did so at their own risk.

²³ *PN*, 32 FCC Rcd at 6244 ¶ 21 (“We note that MTB has expressed particular concerns about employing the same individual for bidding advice. We seek comment on whether there are alternative procedures that we could adopt that would be equally effective in preventing the competitive harm from coordinated bidding that we seek to avoid through Section 1.21002(b) and the procedures proposed herein.” (footnote omitted)).

individual basis, the same consultants, experts, and counsel that are retained by other bidders. The Commission should recognize that a third party's use of firewalls and similar measures insulates the retaining providers from violating the prohibited communication rule. But such measures may not always be possible for this Auction given the limited number of experts and potentially vast number of entities bidding.

If experts, consultants, and lawyers from the same firm are precluded from providing guidance to multiple clients, small companies interested in participating will be forced to find and retain their own experts before others. Even worse, in such an "arms race," the most knowledgeable experts will likely be retained by the largest would-be bidders who can promise the greatest levels of activity and remuneration for those expert firms. As a result, a large number of smaller providers may be left without the expert guidance they will desperately need. In fact, even the mere process of *finding* an expert could become a burden of its own for a small business. The Commission thus should permit multiple bidders to engage the same third parties.

Indeed, and as noted, this will be the Commission's first Universal Service Fund reverse descending-clock auction. There may not be enough consultants, experts, or lawyers with the requisite expertise to advise each provider separately. Moreover, the CAF Phase II Auction is designed to attract the participation of providers like Rural Coalition members: smaller providers with regional, intrastate networks—many of whom will even be located within the same state. Thus, even if there are enough consultants, experts, and lawyers to go around, the available CAF funding may not be sufficient to justify these providers' making the expenditures necessary to retain larger firms, such that the adoption of firewalls or equivalent procedures would be even possible.

The concerns that animated the Commission’s approach to prohibited communications in the spectrum auctions are not present here. For example, in the incentive auction, there was a concern that two or more broadcast licensees with footprints in multiple DMAs could engage in anti-competitive exchanges: licensee A would commit to drop out in DMA 1 (in favor of licensee B), in exchange for licensee B’s committing to drop out in DMA 2 (in favor of licensee A), such that each would receive a greater payout for surrendering spectrum.²⁴ That risk is diminished here, where the applicants will be smaller, regional, and often entirely intra-state providers, who lack the requisite footprints to engage in such exchanges.

Additionally, the benefit to be obtained in the incentive auction for broadcasters effectively was cash, which is fungible and transferrable. There was thus a greater risk that licensee C could offer licensee D some portion of the windfall if licensee D were to drop out in a bidding round. Here, however, the government benefit is less fungible and transferrable, reducing the incentives for applicants to collude.²⁵ Taken together, these differences also demonstrate that even if inadvertent information sharing occurs via a third party,²⁶ those communications are unlikely to have an adverse effect on the integrity of the auction.

In light of the reduced likelihood of, and negative consequences associated with, communications regarding bids and bidding strategies in this Auction, the Rural Coalition urges

²⁴ See *In re Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, 6378 ¶ 400 (2014) (“Reverse auction participants will compete on a national basis for the limited funds that forward auction participants will contribute . . . and . . . all reverse auction participants will compete against each other for the auction system to accept their offers to relinquish spectrum usage rights. Thus it is appropriate to limit communications between covered television licensees on a national level.” (footnote omitted)).

²⁵ Indeed, yet another difference that weighs in favor of a more flexible approach here is that the Commission’s broadcast ownership rules and other features of the incentive auction attracted speculators on the broadcast side, a development which is unlikely here. See Jim Puzzanghera, *Buyers of Struggling Little TV Stations Could Make Big Money in Airwave Auction*, L.A. TIMES (Mar. 24, 2016, 8:01 AM), <http://www.latimes.com/business/la-fi-broadcast-auction-speculators-20160324-story.html>.

²⁶ See *Incentive Auction Guidance*, 30 FCC Rcd at 10,802 ¶ 20.

the Commission to adopt a more flexible mechanism for providers to retain the same individual consultants, experts, or lawyers without risking enforcement under the prohibited communications rule. One solution would be for the Commission to provide a safe harbor certification, based on the attestation required by the State of New York—which will be the sole anti-collusion requirement for bidding to receive CAF Phase II support in New York because the Commission exercised forbearance from applying its prohibited communications rule to the distribution of funds under the New York Broadband Program.²⁷ For purposes of the New York Broadband Program, providers must comply with the following provisions and attest as follows:

(1) [T]heir applications—including the costs presented and grant amounts requested therein—have been developed independently, without collusion, consultation, communication, or agreement *for the purposes of restricting competition* . . . ; (2) unless otherwise required by law, the costs presented and grant amounts requested . . . will not *knowingly* be disclosed *by the applicant* to any other applicant or to any competitor; and (3) no attempt has been made, or will be made, by the Applicant to submit or to not submit an application *for the purposes of restricting competition*²⁸

The Rural Coalition encourages the Commission to consider a similar approach here to ensure that smaller entities can participate.

Finally, the Rural Coalition encourages the Commission to conduct further education on both auction procedures and the application of the anti-collusion rules. For the incentive auction, the Commission conducted webinars, workshops, and mock auctions, and published tips,

²⁷ See *PN*, 32 FCC Rcd at 6240-41 ¶ 9; *In re Connect America Fund*, Order, 32 FCC Rcd 968, 972 ¶ 11 & n.39 (2017) (waiving application of, among other things, “the Commission’s competitive bidding rules for universal service” including the prohibited communication rule, to allocation of CAF II funds through New York Broadband Program).

²⁸ NYS BROADBAND PROGRAM OFFICE, NEW NY BROADBAND PROGRAM: PHASE 3 REQUEST FOR PROPOSAL GUIDELINES 49 (Mar. 30, 2017), https://nysbroadband.ny.gov/sites/default/files/broadband_-_phase_3_rfp_guidelines-final.pdf (emphases added).

guidance materials, and manuals.²⁹ As the Rural Coalition has explained, the CAF Phase II Auction has the potential to be as complicated as the incentive auction,³⁰ and the very providers the Commission wants to participate in this Auction (*i.e.*, first timers) lack familiarity with auction logistics (*e.g.*, software, data files, etc.), as well as the unique characteristics of this Auction (*e.g.*, descending-clock format, decrementing percentages, weighting factors). Providers thus would benefit from similar instruction and iterative practice. It is likewise critical that providers be able to avail themselves of such Commission support with auction counsel or consultants, reinforcing the need for the Commission to apply the anti-collusion rules flexibly.

II. The Commission Should Adopt Minor Modifications to the Proposed Auction Procedures to Facilitate a Fair Auction, Encourage Participation, and to Ensure the Budget Is Fully Spent.

As proposed in the *Public Notice*, the Rural Coalition is concerned that the CAF Phase II Auction could leave a significant amount of the budget unspent. This could occur in any round in which bidders from the prior round drop out in multiple regions, causing support to fall below the budget with no winning bidder to receive support. While \$1.98 billion is significant, it will not connect all eligible unserved areas. Given the number of unserved locations that are awaiting broadband, the Commission should prevent this anomalous result.

As referenced above, the CAF Phase II Auction entails a great deal of complexity, with “clock percentage[s]” and “implied support amount[s],”³¹ “clock round[s]” and “clearing

²⁹ See, *e.g.*, *Incentive Auction Resources*, FCC.GOV (last updated June 19, 2017), <https://www.fcc.gov/about-fcc/fcc-initiatives/incentive-auctions/resources>; *Auction 1001, Reverse Auction Relinquishing Broadcast Spectrum Rights*, FCC.GOV (last updated Aug. 29, 2017), <https://www.fcc.gov/wireless/auction-1001>.

³⁰ See Letter from Rebekah Goodheart, Counsel for the Association of Missouri Electric Cooperatives et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 2 (July 26, 2017).

³¹ *PN*, 32 FCC Rcd at 6262 ¶ 80.

round[s],”³² and “intra-round price point[s]”³³ as wrinkles all woven into the Auction’s complicated fabric. One of the most significant challenges to be addressed in the design of the Auction is to ensure a bid processing framework that results in as much of the CAF Phase II funding as possible being utilized even as the clock decrements “knock bidders out” as the rounds proceed. The Rural Coalition is concerned that this goal will not be satisfied based upon the current auction design, and urges the Commission to consider alternative means of bid processing that will preclude the prospect of substantial sums of money left on the table at the end of the CAF Phase II Auction.

A few examples may help explain the Rural Coalition’s concerns in this regard; these examples proceed from a common fact pattern to help demonstrate how this concern could manifest in several different ways:

Common Fact Pattern

- There is a universe of 10 areas subject to auction nationwide.
- All bidders propose to offer the same tier of service (unless noted otherwise in the examples below).
- The starting price for each area is \$100, and the price reduces by \$5 each round.
- The total auction budget is \$500.
- In the first round, all 10 areas receive bids for a total cost of \$1,000.
- Because the total bid cost exceeds the budget, another “clock round” is called at the reduced \$95 price.

Example 1: “Large Bidder Exits Late”

³² *Id.* at 6268 ¶¶ 112-13.

³³ *Id.* at 6268 ¶ 110.

- Assume that one large bidder is the *only* bidder in 8 of the 10 areas subject to auction.
- Assume that the auction goes 9 rounds, meaning the total cost has fallen to \$600 (10 areas at \$60 each).

If the large bidder decides then to exit after 9 rounds, that will leave only 2 bids remaining, each at \$55 in round 10. Those bids would then prevail at a total budget of \$110—far below the \$500 budget allocated for the auction and with consumers only receiving service in 2 of the 10 areas that were potential beneficiaries of the auction. While this example focuses upon one larger bidder, it appears that a similar dynamic would result in the event that many bidders decided to exit late as well.

Example 2: “Package Bidding and Minimum Scale Failure”

- Assume that after 6 rounds, bidders exit from 3 of the 10 areas subject to auction.
- This leaves bids in the remaining 7 areas at \$70 each, meaning the total cost has fallen to \$490—clearing the budget by \$10.
- But assume these are actually package bids, with one for only 2 of the remaining areas and the other for all 7 remaining areas.
- The larger package bid is the only bid in 5 areas, but it is ineligible for partial assignment because it does not satisfy the 80% minimum scale condition.

If the larger package bidder decides to exit in round 8 (which would continue due to the competition for overlapping areas), this would leave the smaller firm bidding at the new base clock price of \$65—resulting in the smaller package bid prevailing and being assigned at a total auction cost of \$140 (this being the price in the clearing round), which is \$360 below the total budget made available for the auction.

This is not an exhaustive list and other permutations could lead to similar results. Although intra-round price points and assignment rules may be designed to help mitigate such results, examples such as those above indicate there is real risk that the budget for the CAF Phase II Auction may go underutilized. The Rural Coalition continues to consider means of addressing these concerns and also simplifying the Auction as a whole, but the upshot remains that with so many unserved rural areas having waited so long for broadband access,³⁴ the prospect that the Auction's rules could leave some amount of allocated funding unutilized is a result that the Commission should strive to avoid. Indeed, it would be truly unfortunate not to use all available funding when the Connect America Fund and the High Cost program, as currently structured, do not appear to be sufficient to support the deployment and maintenance of broadband networks throughout rural America—and such result should not be countenanced.

III. The Commission Must Adopt Additional Upfront Eligibility and Accountability Measures to Ensure that Only Qualified Bidders Participate in the Auction.

The Rural Coalition supports the Commission's efforts to require potential bidders to submit a short-form application to screen applicants.³⁵ To ensure that entities bidding in the CAF Phase II Auction not only have the requisite financial resources, but are also prepared to invest the capital necessary for sufficient network buildout to become the carrier of last resort, the Rural Coalition urges the Commission to strengthen the Auction's accountability measures in several respects. Absent these protections, unqualified entities may win support, and ultimately

³⁴ Letter from Sen. Claire McCaskill, U.S. Senate, to Chairman Ajit Pai, FCC (Aug. 18, 2017).

³⁵ See *PN*, 32 FCC Rcd at 6242 ¶ 15.

fail to deliver on their commitments. If this occurs, universal service support will be wasted and, even more concerning, unserved rural communities will continue to be left behind.³⁶

First, the Rural Coalition urges the Commission to augment the short-form review and require (1) providers proposing to use spectrum to submit propagation maps; and (2) providers proposing to use satellites to disclose their total capacity and identify the total number of locations that can be served with such capacity in any round of the auction.³⁷ In evaluating compliance with the short-form requirements and network capability, the Commission should adopt its proposal to require all bidders to assume a subscription rate of at least 70% when submitting short-form applications; this is hardly burdensome when one considers that the prevailing bidder will, in effect, be the “provider of last resort” for the area(s) in which it prevails.³⁸ And, the Commission should direct the Universal Service Administrative Company (“USAC”) to hire a third party with relevant expertise to review the short-form applications to ensure that the bidders meet the relevant requirements.

Second, the Commission should adopt its proposal to prevent the distribution of finite CAF support to entities that are not able to meet performance requirements. In particular, the Commission should, as it proposed, consult Form 477 data and prevent entities relying on

³⁶ See *In re Sandwich Isles Communications, Inc., Waimana Enterprises, Inc., Albert S.N. Hee*, Notice of Apparent Liability for Forfeiture and Order, 31 FCC Rcd 12,947, 12,948 ¶ 1 (2016) (“Parties that defraud or otherwise harm the high-cost program not only deprive the Fund of much-needed funds, but also potentially harm residents in high-cost areas, who may not have access to modern networks.”).

³⁷ To the extent the Commission wants to keep such review technology neutral, the Rural Coalition does not object to submitting maps as well. The Rural Coalition is committed to a technology-neutral auction and has previously emphasized the need for the Commission to validate all bidders’ technical claims. See Letter from Rebekah Goodheart, Counsel for the Association of Missouri Electric Cooperatives et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 3 nn.7, 9 (Jan. 19, 2017) (encouraging the “[v]alidation of [all providers’] technical claims” and noting the need for a “neutral framework”).

³⁸ See *In re Connect America Fund ETC Annual Reports and Certification*, WC Docket Nos. 10-90 & 14-58, Opposition to Petition for Reconsideration of Hughes Network Systems, LLC 12 (May 18, 2017).

particular technologies from bidding in tiers in which the relevant technology is not available to rural consumers today.

Finally, the Commission should adopt strong, ex ante penalties to discourage providers from misrepresenting their technical capabilities. Such penalties will ensure that the Commission incentivizes full compliance with the short-form and long-form application requirements, will avert improper payments, and will minimize later expenditures on costly recovery programs.

A. The Commission Should Ensure that CAF Phase II Support Is Not Distributed to Providers that Cannot Satisfy Their Public Interest Obligations.

The Commission has long recognized that “ensuring fiscal responsibility” is a priority when it comes to universal service funds.³⁹ This focus on accountability derives not only from a commonsense aversion to waste, but also the Commission’s fiduciary obligation to ensure that scarce universal service resources are allocated effectively and efficiently.⁴⁰

More specifically, the Commission is the “steward[] of the USF,”⁴¹ with an attendant fiduciary obligation to those who pay into the fund. As the Commission has noted, “[t]he cost of universal service programs is ultimately borne by the consumers and businesses that pay to fund these programs,” and the Commission thus has a “corresponding obligation to exercise fiscal responsibility” by avoiding excessive and wasteful subsidization.⁴² This obligation entails the

³⁹ See, e.g., *In re Rural Health Care Support Mechanism*, Report and Order, 27 FCC Rcd 16,678, 16,759 ¶ 176 (2012).

⁴⁰ See, e.g., *Phase II Auction FNPRM Order*, 32 FCC Rcd at 1630 ¶ 23.

⁴¹ E.g., *In re Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 5986 ¶ 109 (2016); *In re Connect America Fund*, Fifth Order on Reconsideration, 27 FCC Rcd 14,549, 14,553 ¶ 11 (2012).

⁴² *In re Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 2152, 2161 ¶ 24 (2017) (“*Mobility Fund II Report and Order*”); see also, e.g., *Connect America Fund First Report and*

utmost care in design and management to prevent waste, fraud, and abuse,⁴³ which has consistently ranked among the Commission’s “over-arching objective[s].”⁴⁴

Although the Commission’s proposed short-form review measures are a welcome step, the Rural Coalition is concerned that the Commission’s proposals may not be sufficient to ensure that bidders are capable of satisfying all performance obligations, potentially leaving consumers footing the bill for inadequate services and defaulting providers. As set forth more fully below, the Rural Coalition’s additional proposed measures will ensure that the CAF Phase II Auction—with a budget of \$1.98 billion over ten years—is not distributed to providers who cannot satisfy their performance obligations. By adopting these measures, the Commission will not only hasten the deployment of broadband nationwide, but will also save resources in the form of avoided wasteful allocations and costly expenditures on the ex post remedies that are necessary to recapture improper payments.⁴⁵

Order, 26 FCC Rcd at 17,670 ¶ 11 (“We recognize that American consumers and businesses ultimately pay for USF, and that if it grows too large[,] this contribution burden may undermine the benefits of the program by discouraging adoption of communications services.”).

⁴³ See, e.g., *Mobility Fund II Report and Order*, 32 FCC Rcd at 2161 ¶ 24; *In re Lifeline and Link Up Reform and Modernization*, Notice of Proposed Rulemaking, 26 FCC Rcd 2770, 2859 ¶ 288 (2011).

⁴⁴ *In re Lifeline and Link Up Reform and Modernization*, 26 FCC Rcd at 2859 ¶ 288.

⁴⁵ See, e.g., PETER VIECHNICKI ET AL., SHUTTING DOWN FRAUD, WASTE, AND ABUSE: MOVING FROM RHETORICAL TO REAL SOLUTIONS IN GOVERNMENT BENEFIT PROGRAMS 9 (2016), available at https://dupress.deloitte.com/content/dam/dup-us-en/articles/fraud-waste-and-abuse-in-entitlement-programs-benefits-fraud/DUP_3043_WasteFraudError_FINAL.pdf (“It’s well known among program integrity professionals that prevention is much more cost-effective than after-the-fact recovery. . . . Prevention saves not just the cost of overpayments, but also the cost of the chase.”); N.Y. STATE OFFICE OF THE STATE COMPTROLLER, MEDICAID MANAGED CARE ORGANIZATION FRAUD AND ABUSE DETECTION 25 (Report 2014-S-51, July 2016) (“[P]reventing inappropriate payments is more cost effective than attempting to recoup inappropriate payments.”).

B. The Commission Must Augment the Short-Form Requirements.

1. Wireless Providers Should Be Required to Submit Propagation Maps.

The Commission should require applicants that will rely on wireless spectrum (both licensed and unlicensed spectrum) to provide propagation maps of their planned coverage areas. Given the unique and varying nature of terrain in rural areas, and the attendant complexities in deploying fixed wireless in such areas,⁴⁶ the Commission should take this measure to ensure that bidders have considered and evaluated local geography and topography, invested sufficient financial and engineering resources, and are committed to deploying the necessary infrastructure to meet their performance obligations and connect unserved households.

Requiring propagation maps should not impose a significant burden on providers. The *Public Notice* contemplates that wireless providers, like all applicants, will be required to certify that they have investigated and evaluated “all technical and marketplace factors that may have a bearing on the level of Connect America Fund Phase II support” they can receive, as well as their ability “to build and operate facilities in accordance” with their service obligations.⁴⁷ Additionally, wireless providers will be required to submit information “regarding the sufficiency of the spectrum to which [they have] access.”⁴⁸ In order to meaningfully comply with these requirements, wireless providers will already need to perform the due diligence that would support the development of preliminary propagation maps. Taking the next step of submitting these maps at the short-form stage thus should not be burdensome.

⁴⁶ See, e.g., Michael Brown, *Vivint Rolls Out 100Mbps Wireless Home Internet Service for \$60 per Month*, TECHHIVE (June 24, 2015, 5:00 AM), <https://www.techhive.com/article/2939420/vivint-rolls-out-100mbps-wireless-home-internet-service-for-60-per-month.html> (quoting wireless broadband provider’s acknowledgement that “[r]ural communities with five-acre lots don’t work for us” and that “some areas of the [S]outh, where there are lots of tall mature trees blocking line of sight . . . can be problematic”).

⁴⁷ *PN*, 32 FCC Rcd at 6257 ¶ 62.

⁴⁸ *Id.* at 6250 ¶ 37.

2. Satellite Providers Should Be Required to Identify Their Total Capacity, and Should Not Be Permitted to Bid in Excess of That Capacity.

The Commission should require every applicant relying on satellite technology to identify the total capacity for its satellites, and the number of locations that the applicant can serve in a given service tier, given its total capacity. Because the short-form application is to be evaluated on a state-by-state basis, nothing in the Commission’s proposed screening procedures would prohibit satellite providers to bid for support to serve more locations than they are technically capable of serving. The result would be that certain locations would be at risk of not receiving any broadband service.

Irrespective of technology platform, applicants should not be permitted to enter bids for support beyond the areas that they can, in fact, serve—that is the *raison d’être* of the short-form requirements. Satellites have unique capacity constraints that prevent satellite providers from providing more than a small and finite number of users with service without a significant loss in speed.⁴⁹ For example, even with recent enhancements to capacity, just “60,000 subscribers . . . using 25 Mbps service will exhaust the capacity” on recently launched satellites.⁵⁰ Due to this inherent limitation on satellite technology, the Commission should require each bidding satellite provider to identify in its short-form application the total capacity for its satellites, and the number of locations it can serve in a given service tier, based on that total capacity. In any given

⁴⁹ See, e.g., Letter from Michael Romano, NTCA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, WC Docket No. 05-337, Attach., VANTAGE POINT SOLUTIONS, ANALYSIS OF SATELLITE-BASED TELECOMMUNICATIONS AND BROADBAND SERVICES 8 (Nov. 7, 2013).

⁵⁰ Letter from Larry Thompson, CEO, Vantage Point Solutions, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, Attach., VANTAGE POINT SOLUTIONS, SATELLITE BROADBAND REMAINS INFERIOR TO WIRELINE BROADBAND 4 (Sept. 5, 2017).

round of the Auction, a satellite provider should not be able to bid on more locations than it has capacity to serve.

As with the propagation maps, this proposed requirement is merely the logical and necessary outgrowth of the Commission’s proposed short-form requirements. Specifically, the *Public Notice* already identifies that the Commission will need “to assess whether satellite providers have the required authorizations and adequate access to spectrum” to satisfy their public-interest obligations, and proposes unique short-form requirements for such providers.⁵¹ Unfortunately, given the state-by-state review, the requested spectrum authorizations and short-form narrative statements regarding satellite providers’ operations will tell only part of the story.

3. The Commission Should Adopt Its Proposal to Require All Applicants to Assume a Subscription Rate of 70%.

The Commission sought comment on whether to require service providers to assume a subscription rate of at least 70% for voice and broadband services when submitting applications to participate in the CAF Phase II Auction.⁵² The Rural Coalition supports the Commission’s proposal. As an initial matter, the CACM already incorporates a 70% subscription rate,⁵³ which reflects the Commission’s determination—based on vacancy rates and the need for “time to upgrade facilities” in rural areas—of the number of rural consumers that will subscribe in a given area.⁵⁴ Allowing providers to build networks that will serve fewer than 70% of locations in a census block group while supplying them with support to serve 70% of locations could amount

⁵¹ See *PN*, 32 FCC Rcd at 6251 ¶ 41.

⁵² *Id.* at 6249 ¶ 36 (“We also seek comment on whether we should require each service provider to assume a subscription rate of at least 70 percent for voice services, broadband services, or both when determining whether it can meet the public interest obligations for its selected performance tiers and latency combinations.”).

⁵³ See *In re Connect America Fund High-Cost Universal Service Support*, Report and Order, 29 FCC Rcd 3964, 4040 ¶ 179 (2014).

⁵⁴ *In re Connect America Fund High-Cost Universal Service Support*, Memorandum Opinion and Order, 29 FCC Rcd 14,092, 14,096 ¶ 11 (2014).

to an unwarranted financial windfall for support recipients—and, just as concerning (and as discussed further below), a lesser assumption could leave thousands of scattered rural consumers “stranded” because their nominal “provider of last resort” lacks the capacity to deliver broadband to them despite receiving federal universal service support to do so.

Additionally, the Commission already granted price cap incumbent local exchange carriers forbearance from their federal eligible telecommunications carrier service obligations in census blocks that are funded in the CAF Phase II Auction.⁵⁵ As a result, price cap carriers may seek to be relieved from the carrier of last resort obligations or cease providing service in geographic areas where another entity wins support in the Auction.⁵⁶ Winning bidders thus must be prepared to serve all households within the census block groups in which they win support as the effective provider of last resort.⁵⁷ If they are unable to do so, it is possible that certain rural consumers will be stranded as discussed above and, as a result, communities may lose access to voice services they had prior to the Auction.⁵⁸

Equally important is that if the Commission underestimates take rates, providers will be able to enter bids that do not reflect the cost of delivering service to all locations for the duration of the support term. This could not only risk providers being unable to serve all consumers who request the service, but could also result in an unfair auction in which certain providers enter bids

⁵⁵ See *In re Connect America Fund*, Report and Order, 29 FCC Rcd 15,644, 15,663-71 ¶¶ 50-70 (2014).

⁵⁶ See Letter from Rebekah Goodheart, Counsel for the Association of Missouri Electric Cooperatives et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 8 (Jan. 19, 2017).

⁵⁷ See *id.*

⁵⁸ See *id.* (noting that “an inability or failure to deliver on the promised networks to *each and every location* in the relevant census blocks risks creating what would effectively be small pockets of ‘remote areas’ scattered among census blocks across rural America”).

that are artificially low, to the detriment of bidders who make realistic estimates in line with actual experience in rural areas.

Indeed, the experience of Rural Coalition members that have deployed in rural areas shows that a 70% subscription rate is a reasonable assumption. Rural Coalition members have seen even higher subscription rates in hard-to-reach areas, demonstrating that lower subscription for certain provider types has more to do with customer preferences for faster, lower-latency services than with other barriers to subscription.⁵⁹ Moreover, the Rural Coalition expects that this rate will be even higher in census block groups that are subject to the CAF Phase II Auction, as households in these areas are likely to have fewer, if any, other options for service.

4. The Commission Should Direct USAC to Hire a Third Party to Ensure That Only Qualified Entities Participate in the Auction.

To ensure that providers meet the eligibility requirements, and to minimize the burden that reviewing the short-form applications will impose on Commission staff, the Rural Coalition urges the Commission to direct USAC to hire a third party with technical expertise to review the short-form applications and determine which entities are eligible to participate in the CAF Phase II Auction.⁶⁰ Doing so will help ensure that only qualified bidders participate in the Auction and, thus, should avoid unnecessary defaults or providers failing to deliver on the requisite performance obligations. It is also consistent with the approach in New York. Indeed, New

⁵⁹ *In re Connect America Fund ETC Annual Reports and Certification*, WC Docket Nos. 10-90 & 14-58, Opposition to Petition for Reconsideration of Hughes Network Systems, LLC 7 (May 18, 2017); NTCA 2015 Broadband Survey Report, *supra* note 7, at 7 (“Survey results indicate an overall broadband take rate from NTCA member companies of 73%, up slightly from 70% a year ago.”).

⁶⁰ *See* Letter from Sen. Claire McCaskill, U.S. Senate, to Chairman Ajit Pai, FCC (Aug. 18, 2017); *see also* Letter from Rebekah Goodheart, Counsel for the Association of Missouri Electric Cooperatives et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 9 (Jan. 19, 2017).

York has specifically stated that applications for the New York Broadband Program may be screened by outside consultants to ease the burden on the state's Broadband Program Office.⁶¹

C. The Commission Should Adopt Further Eligibility Preclusions.

In the *Public Notice*, the Commission proposed several commonsense measures that will help to expedite the review of the short-form applications.⁶² Among these, the Commission proposed reviewing Form 477 data and, based on these data, “preclud[ing] an applicant that intends to use certain technologies from selecting certain performance tier and latency combinations.”⁶³ The Rural Coalition applauds the Commission's preclusion measures and proposes that they be enhanced. In particular, the Rural Coalition proposes that the Commission expand its prohibition against the use of certain technologies in high-speed and low-latency tiers.

The Commission should adopt its proposal to use Form 477 data, and likewise should evaluate other technical data and information regarding the technologies and commercial availability that are part of this record, to limit providers to speed and latency tiers in which the technologies they utilize are offered to consumers today.⁶⁴

For instance, the Commission proposed that because, according to the Commission's data, satellite-based providers are unable to deliver low latency or download speeds approaching 1 Gbps, they should be precluded from bidding in the low latency and Gigabit tiers.⁶⁵ The Rural

⁶¹ NEW NY BROADBAND PROGRAM, *supra* note 28, at 38.

⁶² *PN*, 32 FCC Rcd at 6253 ¶ 49.

⁶³ *See id.*

⁶⁴ For example, the record in this proceeding includes technical White Papers addressing the capabilities and limitations of satellite and fixed wireless technologies which support the eligibility preclusions that the Rural Coalition proposes herein. *See supra* notes 49-50, *infra* notes 68-69, and accompanying text.

⁶⁵ *See id.*; FCC, OFFICE OF ENG'G AND TECH., 2016 MEASURING BROADBAND AMERICA FIXED BROADBAND REPORT 21 (2016), <http://data.fcc.gov/download/measuring-broadband-america/2016/2016-Fixed-Measuring-Broadband-America-Report.pdf>; *In re Inquiry Concerning the Deployment of Advanced Telecommunication Capability to All*

Coalition agrees with the Commission’s proposal, which will help to “streamline the review of short-form applications.”⁶⁶ It makes little sense for the Commission to entertain bids that applicants cannot ultimately deliver due to network limitations. Nor is it wise for the Commission to risk wasting CAF support on services that have extremely limited commercial availability or have never even been brought to market.

In line with the Commission’s reasoning, the Rural Coalition observes that because the Commission’s own Form 477 data demonstrate that “no satellite broadband provider offers residential service meeting . . . 25 Mbps/3 Mbps,”⁶⁷ the Commission should also preclude satellite providers from bidding in the 100 Mbps speed tier in addition to the Gigabit and low latency tiers. Such preclusion is particularly appropriate with respect to satellite-based technology because satellite providers will not be able to deliver reliable service in the 100 Mbps speed tier in the near future: “Even with [recent] increases in satellite capacity, geostationary satellites still have significant capacity constraints, which necessitate stringent usage controls for consumers.”⁶⁸

Americans, 2015 Broadband Progress Report and Notice of Inquiry on Immediate Actions to Accelerate Deployment, 30 FCC Rcd 1375, 1379 ¶ 9 (2015).

⁶⁶ *PN*, 32 FCC Rcd at 6253 ¶ 49.

⁶⁷ *In re Inquiry Concerning the Deployment of Advanced Telecommunication Capability to All Americans*, 2016 Broadband Progress Report, 31 FCC Rcd 699, 720-21 ¶ 48 (2016). This is not to say that reasonable measurements of connection rates that take into account network configuration or capabilities of customer premises equipment will always precisely equal a prescribed speed. For example, depending upon configuration, a 25 Mbps or 100 Mbps speed could measure as something slightly less, and even the industry standard Gigabit offering may appear slightly below 1 Gbps on speed tests once overheads and packet information are accounted for. Such minor speed variations and performance are simply reflective of actual field deployments and certainly can and should be taken into account when establishing any performance standards expected of support recipients. This is fundamentally different than when a service is not commercially available in the first instance. Where a commercial offering in the speed tier is not even reported, that forms a reasonable basis for preclusion from such speed tiers for bidding and compliance purposes.

⁶⁸ VANTAGE POINT SOLUTIONS, SATELLITE BROADBAND REMAINS INFERIOR TO WIRELINE BROADBAND, *supra* note 50, at 8.

Similarly, the Commission should prevent providers using fixed wireless technologies from bidding in the above-baseline (100 Mbps and 1 Gbps) speed tiers as well.⁶⁹ A review of Form 477 data indicates that providers using such platforms currently do not provide 1 Gbps service to consumers in rural areas and thus should not be able to bid in this speed tier in the CAF Phase II Auction. Likewise, based on the Rural Coalition’s review of recent Form 477 submissions, it appears that, of the thousands of fixed wireless providers in the country, only a very small number report offering 100+ Mbps download speeds to more than a single census block. Furthermore, despite the Form 477 indication, it does not appear that 100+ Mbps service is actually available in these areas as a commercial matter.

For example, the Rural Coalition specifically examined census tracts in which at least 50 percent of the households are in rural areas (3,831,895 individual census blocks). Based on current Form 477 data, it appears that fewer than one thousandth of one percent of those census blocks are served by a fixed wireless provider reporting 100+ Mbps download speeds, and it does not appear that any fixed wireless service offering in any of these census blocks meets the performance requirements for these above-baseline tiers, including 20 Mbps or 500 Mbps upload speeds and monthly capacity of 2 TB.

Given the Commission’s recognition of the shortcomings with the Form 477 data particularly with respect to universal service purposes, such anomalies should not necessarily be a surprise.⁷⁰ Indeed, the Commission recently adopted a one-time data collection for purposes of

⁶⁹ See Letter from Michael Romano, NTCA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, Attach., VANTAGE POINT SOLUTIONS, EVALUATING 5G WIRELESS TECHNOLOGY AS A COMPLEMENT OR SUBSTITUTE FOR WIRELINE BROADBAND (Feb. 13, 2017); Letter from Michael Romano, NTCA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, WC Docket No. 05-337, Attach., VANTAGE POINT SOLUTIONS, WIRELESS BROADBAND IS NOT A VIABLE SUBSTITUTE FOR WIRELINE BROADBAND (Mar. 10, 2015).

⁷⁰ See *In re Connect America Fund*, Order on Reconsideration and Second Report and Order, 32 FCC Rcd 6282, 6287 ¶ 9 (2017) (“*MF II Reconsideration Order*”) (“[W]e acknowledge the concerns of commenters [with respect to

the Mobility Fund II Auction to address concerns with the Form 477 data.⁷¹ Thus, while the Commission should consult the Form 477 data, it should construe these data conservatively—and it also should evaluate services in the market to confirm that such services are available at the parameters for the CAF Phase II Auction.

In short, to protect the finite amount of funding from risky speculation on unproven concepts, and to streamline the short-form review for Commission staff, the Commission should, in this Auction, limit bidding in the above-baseline tiers by providers utilizing technologies that have extremely little to no commercial presence in those tiers today. While technology may continue to evolve, such that satellite and fixed wireless may be able to achieve above-baseline speeds in future auctions, evidence indicates that such services are not available generally (and especially in rural areas) today.

D. The Commission Should Adopt Clear Ex Ante Penalties for Noncompliance.

The Rural Coalition continues to advocate for strict penalties that will be imposed on winning bidders that do not ultimately comply with auction requirements or their public interest

the reliability and standardization of Form 477 data.]”); *In re Modernizing the FCC Form 477 Data Program*, Further Notice of Proposed Rulemaking, 32 FCC Rcd 6329, 6332 ¶¶ 9-10 (2017) (noting that “[p]roviders, and not the Commission, decide the speeds of service they offer and may choose among different” methodologies, and that “these methodologies tend to vary among providers,” making it “difficult for the Commission to compare coverage areas and minimum reported speeds, as the underlying meanings of what the coverage and speed information depict may differ among service providers”); *see also In re Connect America Fund*, WC Docket No. 10-90, WT Docket No. 10-208, Comments and Petition for Reconsideration of CTIA 6-7 & n.13 (Apr. 26, 2017) (describing widespread concern with utilizing non-standardized Form 477 data for determining wireless coverage); *In re Connect America Fund*, WC Docket No. 10-90, WT Docket No. 10-208, Reply Comments of NTCA 5 (May 11, 2017) (“Although Form 477 data is certified by carriers, carriers did not utilize a common standard for coverage on their Form 477s. Instead Form 477 enabled carriers to choose their own metrics for determining the minimum advertised upload and download speeds associated with a certain network technology in a frequency band. The Form 477 data thus very likely overstates actual coverage . . .”).

⁷¹ *See generally MF II Reconsideration Order* (reconsidering decision to rely on Form 477 data to comprise baseline for presumptive eligibility determinations for Mobility Fund Phase II Auction, and, instead, adopting one-time standardized data collection to identify presumptive eligibility determinations).

obligations (including regarding speed and latency).⁷² Although the Commission correctly notes that it has the authority to punish gross misrepresentations,⁷³ without clear penalties for noncompliance set forth in advance, auction bidders may not have the incentive to perform the due diligence necessary to ensure that they will in fact be able to build networks capable of satisfying all applicable requirements, including minimum speeds and maximum latency. As noted above, ex ante accountability measures like penalties save resources; the deterrence value of penalties will not only avoid wasteful allocations, but also reduce expenditures on ex-post remedies.⁷⁴ Accordingly, ex ante penalties will help to ensure that CAF funds are used for their intended purpose: supporting the delivery of broadband-capable networks to currently unserved communities.

CONCLUSION

The Rural Coalition thanks the Commission for its ongoing efforts to bridge the digital divide. Moreover, the Rural Coalition applauds the Commission's express intent to bring new regional and local providers such as electric cooperatives and small utilities into the Universal Service Fund fold. The Commission already has proposed meaningful steps to encourage their participation, ensure competitive bidding on a technology-neutral playing field, and prevent waste, fraud, and abuse. The Rural Coalition supports these measures, and respectfully proposes that they should be augmented and enhanced. Further, the Rural Coalition urges the Commission fully to capitalize on the opportunity presented by this Auction by making modifications to the auction procedures to ensure that the entire budget is allocated to qualifying bidders. The Rural

⁷² See Letter from Rebekah Goodheart, Counsel for the Association of Missouri Electric Cooperatives et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 7 (Jan. 19, 2017).

⁷³ See 47 C.F.R. § 54.315(a)(2)(A).

⁷⁴ See *supra* note 45.

Coalition expects that, with the small modifications described herein to the auction requirements and procedures proposed in the *Public Notice*, the CAF Phase II Auction will be a resounding success.

Respectfully submitted,

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