



March 14, 2016

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 - 12th Street, S.W.
Washington, D.C. 20554

Ex Parte

Re: Written Ex Parte Presentation, WC Docket No. 10-90.

Dear Ms. Dortch:

The Utilities Telecom Council (UTC), the National Rural Electric Cooperative Association (“NRECA”) and NTCA – The Rural Broadband Association (“NTCA”) are providing the following written ex parte presentation in the above-referenced proceeding in accordance with Section 1.1206 of the Commission’s Rules. Our ex parte responds to several ex parte presentations in this proceeding offered by other parties, particular those by Hughes Network Systems (“Hughes”).¹

Universal service is founded upon the principles that consumers should have access to quality services at just, reasonable, and affordable rates; that access to advanced telecommunications and information services should be provided in all regions of the Nation; and that the services in rural areas should be reasonably comparable in terms of quality and cost to the services that are available in urban areas.² While the FCC’s rules should be competitively neutral, they should also be technically and economically reasonable, as well.³ Moreover, “the competitive neutrality principle does not require all competitors to be treated alike, but ‘only prohibits the Commission from treating competitors differently in ‘unfair’ ways.’”⁴ In addition, “neither the competitive neutrality principle nor the other section 254(b) principles impose

¹ See, e.g., Letter from Jennifer A. Manner, Hughes to Marlene H. Dortch, FCC, WC Docket No. 10-90 (filed Dec. 29, 2015). See also Letter from Jennifer A. Manner, Hughes, to Marlene H. Dortch, FCC, WC Docket No. 10-90 (filed Oct. 26, 2015); Letter from L. Charles Keller, counsel to Hughes, to Marlene H. Dortch, FCC, WC Docket No. 10-90 (filed Nov. 13, 2015); Letter from L. Charles Keller, counsel to Hughes, to Marlene H. Dortch, FCC, WC Docket No. 10-90 (filed Dec. 3, 2015) (“Hughes Dec. 3 ex parte”); Letter from Jennifer A. Manner, Hughes, to Marlene H. Dortch, FCC, WC Docket No. 10-90 (filed Dec. 11, 2015) (“Hughes Dec. 11 ex parte”); Letter from Jennifer A. Manner, Hughes, to Marlene H. Dortch, FCC, WC Docket No. 10-90 (filed Dec. 21, 2015) and Letter from Jennifer A. Manner, Hughes, to Marlene H. Dortch, FCC WC Docket No. 10-90 (filed Feb. 10, 2016).

² 47 USC §254(b)(1)-(3).

³ 47 USC §254(h)(2).

⁴ *Connect America Fund et al.*, WC Docket Nos. 10-90 et al., Report and Order et al., 26 FCC Rcd 17663, 17731 ¶176 (2011) (“*USF/ICC Transformation Order*”), *aff’d sub nom.* In re: FCC 11-161, 753 F.3d 1015 (10th Cir.2014)

inflexible requirements for the Commission's formulation of universal service rules and policies. Instead, the 'promotion of any one goal or principle should be tempered by a commitment to ensuring the advancement of each of the principles' in section 254(b)."⁵

Consistent with the overarching goal of promoting access to broadband services that are reasonably comparable to terrestrial fixed broadband services in urban America, the Commission required that providers offer broadband service that meets minimum requirements for speed and latency in order to enable the use of real-time communications, including VoIP, and with usage limits, if any, that are reasonably comparable to those in urban areas.⁶ In regard to the precursor to the CAF II reverse auction, the Rural Broadband Experiments, the Commission allocated seventy-five percent (75%) of funds to projects capable of delivering 100 Mbps downstream/25 Mbps upstream, while offering at least one service plan that provides 25 Mbps downstream/5 Mbps upstream to all locations within the selected census blocks with no more than 100 ms of latency.⁸ Qualified bids proposing systems for these high capacity systems exceeded the available funding.

UTC, NRECA and NTCA support the use of minimum requirements for evaluating proposals from providers that compete for access to funding in the reverse auction as part of Phase II of the Connect America Fund. Specifically, UTC, NRECA and NTCA support minimum initial speeds of 25/3 mbps, which is consistent with the FCC's current definition of broadband.⁹ In addition, UTC supports requiring that the networks be capable of providing 100 mbps downstream/25 mbps upstream; have no more than 100 ms latency; and at least 100 GB usage allowance, consistent with the current requirements for Rural Broadband Experiments. The Commission should set these minimum requirements for broadband in order to ensure that rural America is not left behind with substandard services. In addition, the Commission should require that projects be scalable to meet more stringent requirements over the ten year funding period in order to keep pace with evolving broadband capabilities.

UTC, NRECA and NTCA are concerned that the criteria that have been proposed by Hughes and others would water down the minimum requirements and leave consumers and communities in rural America with access to broadband services that are not and will not be

⁵ *Id.*

⁶ *Id.* at 17854, ¶589.

⁸ *Connect America et al.*, WC Docket Nos. 10-90 and 14-58, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8769, 8780, ¶26 (2014) (*Rural Broadband Experiments Order*).

⁹ *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 14-126, 2015 Broadband Progress Report and Notice of Inquiry on Immediate Action to Accelerate Deployment, 30 FCC Rcd 1375 at ¶45 (2015) (*2015 Broadband Progress Report*) (stating "we find that a 25 Mbps/3 Mbps benchmark reflects "advanced" telecommunications capability.").

reasonably comparable to broadband offerings available in urban areas. Other comments on the record express similar concerns.¹⁰

We agree with the Commission that it's important to include latency and capacity requirements, as well as minimum speed and cost among the criteria for the reverse auction.¹¹ These requirements are necessary to support highly interactive real-time applications, such as VoIP, which are affected by latency. These broadband service metrics are necessary to support increasingly sophisticated applications that promote economic growth, better education and training, and improved health care in rural areas and which would be impaired by low capacity broadband networks.

The criteria that have been proposed by Hughes and others would eliminate minimum requirements (including latency and capacity), and would substitute in their place a point-based system for scoring that is intentionally designed to game the auction in favor of slower speed, higher latency and lower capacity technologies. This is not competitively neutral and it is at odds with recent Commission policy statements.¹²

¹⁰ Letter from Jack Richards, Keller & Heckman to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90, et al. (filed Feb. 16, 2016)(attaching a letter signed by 36 organizations representing various rural interests, stating that the Commission should adopt a framework that promotes the deployment of future-proof broadband networks, and not simply the lowest cost network.) *See also* Letter from Stephen Goodman, Butzel Long (counsel to Adtran) to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 10-90 (filed Dec. 30, 2015)(responding to the proposals by ViaSat and Hughes and cautioning the FCC against adopting the Mean Opinion Score (MOS) approach proposed by ViaSat and Hughes instead of the 100 ms latency requirement that was proposed by the Commission. Adtran explained that the MOS approach is “not necessarily accurate” and risks the potential for “gaming” the testing). *And see* Letter from Stephen Goodman, Butzel Long (counsel to Adtran) to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 10-90 at 3 (filed Dec. 15, 2015)(stating “In light of the particular values suggested by Hughes, geostationary broadband satellite service's wholly inadequate latency characteristics and severely constrained capacity would not disqualify such services from CAF Phase II general bidding support, but would become only slight demerits against any such bids.”) *See also* Letter from Michael T. Romano, NTCA – the Rural Broadband Association to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90, et al at 5 (filed Jul. 15, 2015)(stating “[w]ith respect more specifically to the quality of services that consumers should be able to receive and the accountability expected of CAF recipients, the Commission should summarily reject the Hughes Satellite suggestion that a 100 millisecond (ms) latency standard is “too rigid.” Far from being rigid, this standard reflects a reasonable and necessary commitment to ensuring that universal service funds promote access to both quality voice services and also broadband services suitable for real-time applications, including but not limited to Voice over Internet Protocol (VoIP).”)

¹¹ *See e.g. USF/ICC Transformation Order*, WC Docket Nos. 10-90 et al., Report and Order et al., 26 FCC Rcd 17663, 17731 ¶¶96-97 (listing latency and capacity among the primary broadband performance metrics for consideration under the Connect America Fund, and recognizing the importance of the ability to support real-time applications, including voice but also video communications). *See also Id.* at ¶147, *emphasis added* (stating “[t]o fulfill their deployment obligation, carriers must offer broadband service of at least 4 Mbps downstream and 1 Mbps upstream, with latency sufficiently low to enable the use of real-time communications, including VoIP, and with usage limits, if any, that are reasonably comparable to those for comparable services in urban areas.”). This requirement is codified at Section 54.312(b)(4) of the Commission's Rules.

The criteria put forth by Hughes in particular place other more robust terrestrial technologies at a significant disadvantage to satellite and wireless technologies due to overweighting the cost and coverage factors. This overweighting would frustrate the goal of universal service by consigning unserved areas to broadband service that is far below reasonably comparable broadband service available in urban areas. Worse, this would disadvantage consumers and communities in rural America for at least the next ten years, leaving rural residents with marginal broadband service that won't promote economic growth, better education or improved health care.

The Commission should adopt minimum requirements and criteria for the reverse auction that are competitively neutral *and* that also advance the overarching goal of universal service to promote access to quality broadband services that are reasonably comparable to the level of services available in urban areas initially and throughout the ten-year support program. The proposals by Hughes and others do neither. By adopting minimum requirements for speed, latency and capacity the Commission will ensure that unserved areas have an opportunity to obtain quality broadband that is reasonably comparable to the level of service in urban areas. Specifically, the Commission should require that providers offer at least one service package with minimum speeds of at least 25/3 mbps, no more than 100 ms latency, and at least 100 GB usage allowance. Then, the criteria should scale up from there, so that there would be additional points or other weight given to projects that would offer higher speeds, lower latency and greater capacity. Below are the recommended point scale that UTC would recommend for scoring speed, capacity and latency that exceed the minimum requirements.

Download Speed	Point Scoring
> 250mbps	25
100-250	10
25-100	0
< 25mbps	Ineligible

Data Allowance	Point Scoring
Unlimited	25
100 - 250GB	0
< 100GB	Ineligible

¹² For example, the 2016 Broadband Progress Report concludes that satellite technology substantially lags fixed terrestrial broadband technologies:

Our finding that fixed satellite services must meet the same speed benchmark as any other fixed services also should not be construed as a finding that the two services are interchangeable, or that fixed satellite broadband is a substitute for fixed terrestrial broadband service.

Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, 2016 Broadband Progress Report, GN Docket No. 15-191, para. 48 (FCC 16-6, rel. January 29, 2016) (“2016 Broadband Progress Report”).

Latency	Point Scoring
< 30ms	25
< 100ms	0
> 100ms	Ineligible

The total point value for these criteria would be 75 points. Another 25 points would be scaled according to the percentage of the available funding in a given census block that is bid by each provider. UTC’s and NRECA’s scale for scoring the bid for the cost of the project is provided in the table below.

Percentage of Available Funds Bid in a Census Block	Point Scoring
<10%	25
<25%	20
<50%	15
<75%	10
<100	0

The concept of “competitive neutrality” does not compel or warrant the use of bidding preferences or weights based on the lowest common denominators or those that are “technology blind.” The last twenty-five (25) points in the scoring system should be based on the following factors:

Technology-Related Factors	Point Scoring
Capable of meeting evolving broadband speeds over 10 years (“Future-Proof Factor”)	15
Synergies with related Commission policies	10

Deploying broadband technologies that meet evolving broadband standards over the 10-year period is central to the Commission’s CAF II competitive bidding policies.¹³ Continuing enhancements to capacity in fiber-optic networks through steady advances in the electronics used to “light” dark fiber are widely recognized, as are the benefits of advanced modems such as DOCSIS 3.1 for existing fiber-coaxial cable infrastructure.¹⁴ Over and above the Commission’s recent finding that satellite service is not a substitute for fixed terrestrial broadband services,

¹³ See *Connect America Fund et al.*, WC Docket Nos. 10-90 et al., Report and Order, 29 FCC Rcd 15744, 15655, para. 29 (2014) (“We encourage parties receiving ten years of support through the Phase II competitive bidding process to deploy future-proof networks that are capable of meeting future demand.”)

¹⁴ See e.g. [Todd Ogasawara](http://www.extremetech.com/extreme/220025-comcast-begins-rolling-out-docsis-3-1-based-gigabit-home-internet), *Comcast begins rolling out DOCSIS 3.1.- based gigabit home Internet*, ExtremeTech (Dec. 29, 2015), <http://www.extremetech.com/extreme/220025-comcast-begins-rolling-out-docsis-3-1-based-gigabit-home-internet> (last viewed on March 8, 2016).

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satellite capacity expansion requires both substantial upfront investments and extended lead times to construct and deploy new satellites.¹⁵ In addition, satellite capacity is shared between subscribers, which will result in substantially reduced throughput to each subscriber.

The limited funds available for the CAF II reverse auction should support investments in broadband infrastructure that benefit rural residents and communities consistent with other Commission policies.¹⁶ Fiber and fiber-coaxial cable technologies are the most capable, by far, in terms of meeting the 100+ Mbps targets for high speed Internet access service to schools and libraries under the Commission's E-Rate program.¹⁷ Similarly, fiber-based networks are far more capable of supporting mobile broadband in rural areas.¹⁸ It is far better that funding for the universal service programs be mutually supportive, rather than managed in separate silos.

¹⁵ ViaSat Annual Report, Letter to Shareholders, p. 4. Available at http://files.shareholder.com/downloads/VSAT/1165864798x0x842449/D34054DA-5DC6-4B52-8697-8EF0A9211380/Annual_Report_2015_033_Web.pdf (last viewed on March 3, 2016) (“[O]nce a satellite is designed and built there is nothing that can be done to turn a 1 Gbps satellite into even a 7 Gbps satellite, let alone a 100 Gbps satellite”) (last viewed on March 3, 2016).

¹⁶ The fundamental obligation for CAF II recipients is not compromised. The Letter of Credit obligation ensures that CAF II funds can be recovered from services providers that fail to extend service to all high cost locations within census blocks recipients have committed to serve.

¹⁷ See *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870 (2014). CAF II broadband service obligations and deployment obligations would not be relaxed. The Letter of Credit exists so that USF resources are not depleted in the event a winning bidder does not meet its CAF II service and buildout obligations.

¹⁸ See *2016 Broadband Progress Report*, paras. 20-44 (Fixed and mobile broadband have distinct characteristics and capabilities and serve different needs; and consumers require access to both services).

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In the Rural Broadband Experiments Program, utilities are proving that they can deploy broadband networks that are both low-cost and ubiquitous *and* offer services that are high quality and affordable. The CAF II reverse auction should be structured, as outlined herein, to further these gains and benefits.

If there are any questions concerning this matter, please contact the undersigned.

Respectfully,



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