



July 23, 2015

Ex Parte Letter

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

Re: Connect America Fund, WC Docket No. 10-90

NTCA–The Rural Broadband Association (NTCA)¹ hereby submits this *ex parte* letter to address the competitive bidding process for Connect America Fund (CAF) Phase II. NTCA urges the Federal Communications Commission (Commission) to adopt a competitive bidding process that promotes the availability, affordability, and sustainability of high-quality, future-proof broadband networks, as well as the continued availability and affordability of reliable, quality voice service for consumers living in rural areas that are subject to the CAF Phase II process.

NTCA’s interest in this matter results from the ventures undertaken by many of its members. Many of NTCA’s RLEC members also operate competitive local exchange carrier (CLEC) affiliates. These companies have “edged out” into neighboring price cap areas to serve voice and broadband customers (residential and enterprise) as competitive alternatives to the incumbent for voice and broadband, or in some instances to serve customers to whom the price cap incumbent offers voice but has not yet delivered broadband. As a result, these carriers and many others in the RLEC community view CAF Phase II as an opportunity to achieve greater scope and scale by fostering new opportunities to serve additional customers even while maintaining a “local” focus.

NTCA addresses herein certain of the CAF Phase II competitive bidding proposals presently before the Commission, and looks forward to expanding upon such comments and commenting on proposals made by the Commission in any forthcoming public notice.

¹ NTCA represents nearly 900 rural rate-of-return regulated telecommunications providers. All of NTCA’s members are full service rural local exchange carriers (“RLECs”) and broadband providers, and many of its members provide wireless, cable, satellite, and long distance and other competitive services to their communities. Each member is a “rural telephone company” as defined in the Communications Act of 1934, as amended.

The American Cable Association Proposal for a CAF Phase II Competitive Bidding Process, if Amended as Discussed Herein, Offers a Reasonable Starting Point for Ensuring that CAF Phase II Funds Achieve an Evolving Standard of Universal Service.

Several parties have submitted CAF Phase II competitive bidding proposals into the record, and NTCA discusses these below.² At present, the ACA proposal offers the Commission a reasonable approach to ensuring that CAF Phase II dollars support, and are used in a manner consistent with, the Section 254³ imperative for an evolving level of universal service.

Multi-Stage Bidding Focused on Scalability of Networks

At the outset, NTCA supports a multistage bidding process that includes several consecutive bidding stages with varying broadband network performance capabilities.⁴ Under ACA's approach specifically, the Commission would, at Stage 1, accept bids for all eligible census blocks from bidders willing to deploy networks capable of delivering broadband service at 1 Gbps download and 500 Mbps upload; each subsequent stage would lower the speed threshold and would only include those census blocks remaining after the previous stage.⁵

The structure suggested by ACA has merit for several reasons. First, at each stage, it promotes the deployment of broadband networks capable of delivering no less than, and in many cases far more than, speeds of at least 10 Mbps/1Mbps. Bidders would be encouraged to propose the deployment of broadband facilities that are "future-proof" – that is, networks utilizing technology that can stand the test of time, meeting an evolving level of universal service as consumer demand for broadband speed inevitably increases over time. In fact, a more "network-focused" approach to universal service – one that looks to the technology to be deployed for the long-haul rather than at immediate speeds to be obtained in the near-term – would represent the most efficient and responsible use of universal service dollars. More specifically, this would better ensure that rural consumers throughout the nation have access now, and for the long term, to reasonably comparable broadband service that supports applications (such as video and quality voice, the latter being sensitive to latency as discussed below) that require a robust and scalable broadband connection. Indeed, such considerations might give the Commission good cause to refine the ACA proposal to focus not upon multiple bidding stages of relative speed standards,

² American Cable Association *ex parte*, WC Docket No. 10-90, (fil. Jun. 1, 2015) ("ACA"); USTelecom *ex parte*, WC Docket No. 10-90, (fil. Apr. 10, 2015) ("USTelecom"); Wireless Internet Service Providers Association *ex parte*, WC Docket No. 10-90, (fil. Jun. 30, 2015) ("WISPA"); Utilities Telecom Council *ex parte*, WC Docket No. 10-90, (fil. Jul. 6, 2015) ("UTC"); Hughes Network Systems *ex parte*, WC Docket No. 10-90, (fil. Jul. 13, 2015) ("Hughes July 13 *ex parte*").

³ 47 U.S.C. § 254(c)(1).

⁴ ACA, p. 4.

⁵ For the fourth and final stage, any applicants that have their package dismissed because another applicant proposing to serve more census blocks overlaps their package should be offered the option of receiving support for any remaining census blocks in their package, assuming no other provider has proposed serving those blocks. This will ensure that no census blocks that a provider has proposed serving will be "left on the table" at the end of stage 4.

but rather to base multiple stages upon the capabilities of underlying network technologies – looking, for example, first to bids that propose fiber-to-the-premises deployments, then to those that rely upon fiber-coax or fiber-copper mixes, and then finally to spectrum-based technology deployments. A technology-driven view of universal service, as compared to one that takes stock only of currently available (or soon-to-be-available) speeds, will better ensure that rural consumers are not resigned to “yesterday’s speeds” in short order.

Competitive Bidding Structure

Regarding the bidding structure, NTCA likewise supports the ACA proposal for the use of self-defined (*i.e.*, bidder-defined) packages of eligible census blocks contained within any individual county. Package bidding – allowing entities to bid on a group of census blocks together – is critical to the ultimate success of any auction proposal. Allowing bidders to select the geographic area they wish to serve gives them the ability to benefit from economies of scale and offers the opportunity to develop strategies for providing service in a given area. Utilizing this methodology allows bidders to most effectively address the specific challenges that a given grouping of census blocks may share.

Moreover, package bidding of this kind in this specific instance is also beneficial from the Commission’s standpoint, as it reduces the overall number of bids submitted while simultaneously maximizing geographic coverage. It reduces the administrative burden of running and evaluating the auction, while ensuring that the greatest possible number of entities will ultimately benefit from robust broadband service.

By contrast, other proposals with respect to a potential bidding process do not offer the same balance and maximization of benefits. The USTelecom proposal, for example, proposes use of a “Composite Efficiency Index” (CEI) as a “simple mathematical calculation [that] allows rapid and objective rating and ranking of all bids, regardless of package size, support amount requested, or geographic location.”⁶ While USTelecom may be correct in asserting that the proposed CEI form of package bidding is “simple,” and while simplicity in *all* aspects of universal service distribution should be an important goal of its own, simplicity is not the sole criterion to be addressed or problem to be solved if other important policy considerations dictate a different approach – and they do here. First, relying upon the CEI as the sole selection criterion appears likely to result in more sparsely populated, more “deeply rural” areas being “left out” yet again for universal service purposes. Typically, these areas have higher costs to serve than more populous areas, thus creating incentives for bidders to exclude these areas from their package bids in an effort to reduce their bid’s overall CEI. Moreover, use of the CEI overlooks the value side of the equation. There must also be a means of evaluating more specifically the customer value inherent to any given bid. The CEI as proposed, (as well as the proposal for a “nationwide process”⁷), unduly rewards those larger carriers proposing to serve broader geographic areas. The USTelecom proposal does not appear to take under consideration the bidder’s specific

⁶ USTelecom, p. 1.

⁷ *Id.* (“All Available Census Blocks will be included in a single competitive bidding process, with a single budget, rather than state-by-state or county-by-county processes.”).

commitment to serving the census blocks in question, or the overall quality of service to be provided. While these factors are admittedly difficult to quantify, their importance should not be sacrificed in the interest of pursuing “simplicity” as a primary (or even solitary) goal.

The UTC proposal on bidding suffers from certain flaws, as well. First, UTC proposes to allow bidders to withdraw or modify a bid if competing bids fail to materialize in the subsequent round.⁸ Unfortunately, this opens the door to gaming, *i.e.*, revising bids to increase the amount of requested support after receiving the assurance that one’s bid will be the winner. In addition, UTC “recommends that package bidding should be limited so that only a certain number of census blocks could be combined in a single package bid” to “increase the level of competition in the auction.”⁹ UTC offers no specifics, however, as to the extent to which package bidding would be “limited.” However, as noted above, package bidding maximizes the geographic coverage of each winning bid, thus stretching CAF Phase II funds as far as possible – the “trick” is to calibrate package bidding to maximize perceived benefits without undermining the competitiveness of the bidding process. Overly strict (or entirely undefined) limits on package bidding will reduce the chances that the most rural areas will be served, as any benefits obtained by combining census blocks with similar (or complementary) challenges will be lost.

Other Aspects of Competitive Bidding

The UTC proposal also contains provisions that lack sufficient detail for full consideration here, yet merit at least some mention herein. By way of example, UTC proposes that bids be evaluated not only on the number of customers served but on the costs of serving those customers and the broadband speeds that would be made available. It is unclear, however, as to which criteria would be given priority or how bids would ultimately be ranked. Moreover, the issues raised by this proposal as to the broadband speeds that would be offered are largely answered by the ACA proposal, which as noted above (and especially if more focused on technology capability at each stage) will result in scalable and future-proof networks being deployed. In addition, the cost of serving the customers within each census block or package of census blocks is presumably already factored in by each participating bidder placing package bids, and these bids can be compared to the model determined support amount for each census block. In short, it is not clear which supposed problem this portion of the UTC proposal is attempting to solve absent additional information and clarification.

In addition, UTC states that its proposal “would reward a bidder for proposing to serve more than the number of locations that the Commission has estimated to be eligible in a given census block.”¹⁰ UTC asserts that bidders will know better than the Commission the number of unserved locations in a given census block. Unfortunately, this provision would seem on its face to reward bids for more densely populated census blocks at the expense of those with less density. It would also seem to potentially direct support to bidders that would seek to serve ineligible locations

⁸ UTC, p. 1.

⁹ *Id.*, p. 3.

¹⁰ *Id.*, p. 4.

(some or many of which may already be served), at the expense of eligible locations in other census blocks. This would appear directly contrary to the intended purpose of the CAF Phase II program.

The Commission Should Adopt Requirements for CAF Phase II that Demand Reasonable Accountability in the Deployment of – and Maximize the Expected Consumer Benefits of – Scalable, Future-Proof Broadband Networks

Performance Metrics

Regardless of the competitive bidding structure ultimately adopted for CAF Phase II, the Commission should require each winning bidder to make available both quality voice and broadband service to every eligible location within each census block, meeting strict performance metrics of the kind expected of CAF recipients thus far and on well-defined (but reasonably achievable) timelines.¹¹ Once the network is deployed, CAF Phase II awardees should then be required to provide service at then-required “reasonably comparable” speeds to a customer location within a defined period of time (*e.g.*, within 14 calendar days of a customer request).¹² These performance metrics would ensure that winners are willing and able to meet an evolving standard of universal service.

With 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.”¹³ 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). In a separate follow-up letter Hughes suggests that a latency threshold of 750 ms is necessary for satellite providers to participate in the CAF Phase II competitive bidding process.¹⁴ Hughes asserts that such “standard will ensure that satellite broadband providers are able to participate in the CAF Phase II competitive bidding process *while providing a robust user*

¹¹ ACA proposes a 90% threshold for serving eligible locations in a census block. ACA, p. 7. Just like overly broad determinations of “unsubsidized competition” presence, however, such a lax standard runs the risk of leaving rural consumers “stranded” with little, if any, hope of ever seeing broadband in the foreseeable future. If an eligible telecommunications carrier (ETC) is going to receive CAF Phase II funding to build to a census block, it should be expected – and required – to build to the entirety of that census block and structure its bid accordingly, rather than “cherry-picking” within a census block and leaving up to 10% of the consumers there without any prospect of broadband. If a would-be CAF II recipient cannot meet that 100% standard, then it should not include that census block in its bid.

¹² See, ACA, fn. 20.

¹³ Hughes July 13 *ex parte*, p. 1. (“Satellite broadband signals, travelling at the speed of light, take more than 100 ms to make the round trip to the satellite. Typical latency 350-600 ms.”).

¹⁴ Hughes Network Systems *ex parte*, WC Docket No. 10-90, (fil. Jul. 20, 2015) (Hughes July 20 *ex parte*), p. 1.

experience that meets the vast majority of consumer voice and data needs.”¹⁵ However, as a Vantage Point Solutions study previously noted, even a latency level of 500 to 600 ms would cause voice consumers to experience a very low quality of service.¹⁶ In other words, Hughes asserts that it is necessary for consumers in areas where a satellite provider is the winning CAF II bidder to expect third-class status in terms of voice service (which, as noted below, is still the supported service) as the price for allowing such providers to participate in the CAF II process.¹⁷

In addition, the fact that voice is increasingly an application offered atop broadband-capable networks does not change the fact that quality voice telephony must, as a matter of law, be offered¹⁸ as the actual supported service.¹⁹ And, of course, good public policy dictates the availability of quality voice – whether as an application atop the network or an essential component within the network – for public safety and other reasons.²⁰ Surely, the Commission

¹⁵ *Id.* (emphasis added).

¹⁶ Vantage Point, Analysis of Satellite-Based Telecommunications and Broadband Services, (November 2013) (“Vantage Point Paper”), attachment to Letter from Michael R. Romano, NTCA, to Marlene H. Dortch, FCC, WC Docket No. 10-90 (filed Nov. 7, 2013).

¹⁷ *See also*, ADTRAN, Inc. *ex parte*, WC Docket No. 10-90 (fil. Jul. 16, 2015), p. 2 (“Utilizing a standard that ensures satisfactory service is hardly an arbitrary exclusion of satellite technology.”). ADTRAN discusses the Hughes proposal for “an R-factor score of 52 in lieu of prescribing a maximum latency of 100 ms” and finds that “such a test would not enable use of real-time applications, such as VoIP to any satisfactory degree” and “that [the] proposed R-factor is at the lower end of the categorization of the quality as being “*Nearly all users dissatisfied*” based on the same ITU model proposed by Hughes.” *Id.*, p. 2. ADTRAN concludes by stating that “it would disserve the public interest to lower the standards more generally in the CAF Phase II competitive bidding process in order to accommodate the ‘technological reality’ of much greater latency for satellites in Geostationary orbit.” *Id.*, p. 3.

¹⁸ To be clear, NTCA continues to support the update of outdated regulatory constructs that *compel* millions of rural customers to purchase voice service in order to obtain affordable broadband services, as such outdated rules are flatly inconsistent with the Commission’s policy goals for an all-IP communications environment. Even as rules must be updated to ensure that consumers are not penalized by choosing to take broadband but not voice from a supported provider, the Commission should expect – and the law requires – that high-cost support recipients offer voice in the first instance to each and every consumer. In other words, the choice as to whether to obtain voice should be made by the consumer, and not decided by the CAF recipient declining to offer it at all.

¹⁹ *Connect America Fund*, WC Docket No. 10-90, *et al.*, FCC 11-161, Report and Order and Further Notice of Proposed Rulemaking (rel. Nov. 18, 2011) (“Transformation Order”), ¶ 79 (“[A]ll ETCs, whether designated by a state commission or this Commission, are required to offer the supported service -- voice telephony service -- throughout their designated service area.”).

²⁰ *See*, Improving 911 Reliability, PS Docket No. 13-175, Report and Order, FCC 13-158 (rel. Dec. 12, 2013), ¶ 23 (“One of the Commission’s primary responsibilities is to ‘make available, so far as possible, to all people of the United States, . . . a . . . wire and radio communication service . . . for the purpose of promoting safety of life and property.’”) (citing 47 U.S.C. § 151, emphasis added).

does not want to fund broadband-capable networks over which consumers cannot place 911 calls during bad weather incidents or other emergencies, or on which voice quality is otherwise so lacking that public safety is at risk. Thus, beyond making it possible for consumers simply to purchase an over-the-top voice service, parties receiving CAF Phase II support must be required to deploy networks over which they will commit to *offer* voice telephony service that is reasonably comparable in price and quality to that offered in urban areas.

The Commission should also reject the argument that some operators “have chosen not to offer a competitive voice service” and that “this business decision should not be a disqualifying factor.”²¹ Such an assertion misses the point of universal service support, which is to encourage the deployment of voice and broadband networks to areas of the nation that lack a business case for a provider to undertake such deployment absent support. WISPA members are certainly free to make the choice to offer only some, but not all, services required by law and good public policy as part of universal service. But one should not then define universal service expectations downward – and leave certain consumers without access to quality, affordable voice services – simply to accommodate an individual firm’s business choices.

The data usage allowance expected of CAF Phase II support recipients is another area where the Commission should avoid calls to define downward the concept of universal service. Specifically, the Commission should summarily reject a call for a 50 GB minimum usage allowance that is based on the assertion that a higher standard would exclude satellite providers from CAF II and therefore be “in violation of the Commission’s principle of competitive neutrality.”²² Again, the consumer experience and the statutory goal of reasonable comparability should never be subordinate to certain classes of providers seeking out CAF Phase II dollars.

Accountability Standards

All CAF Phase II participants should be required to obtain ETC designation prior to participating in the auction. Although the ETC designation process has in various instances been characterized as superfluous or burdensome, it cannot be forgotten that the process is statutorily required – and for good reason. ETC designation protects consumers and the fidelity of publicly administered funding. More specifically, these obligations ensure that ratepayer dollars are used to provide all Americans, regardless of where they live or work, access to high-quality basic and advanced communications services and make recipients of universal service dollars accountable to ratepayers for the use of these funds. The Commission must hold faithful in all respects to the carefully designed statutory provisions (and its own precedent and rules as to the ETC designation process) and avoid “fast-pass” ETC designations that fail to fully consider the qualifications, experience or commitment to universal service (including the ability to offer each of the supported services) of CAF Phase II bidders. Universal service dollars are too limited and the stakes for consumers are too high for simple “check the box” procedures that fail to confirm the fitness of an applicant.

²¹ WISPA, p. 2.

²² Hughes July 20 *ex parte*, p. 2.

To clarify further, it is critical that bidders obtain ETC designation *prior to* auction participation. Although the Commission determined that pre-participation vetting was unnecessary in the limited context of the Rural Broadband Experiments, that proceeding represented a much smaller undertaking with a much smaller amount of funds at stake. The CAF Phase II process, on the other hand, will distribute a substantially larger amount of funds that will affect the ability of millions of rural Americans all across the nation to have access to quality voice and broadband service. Moreover, to the extent that winning bidders fail *after* the auction to demonstrate their financial and technical ability and willingness to undertake all of the responsibilities that come with the receipt of universal service dollars, the Commission will be left with possibly large numbers of unserved Americans and no carrier in place to serve them. In short, requiring ETC designation as a condition of auction participation and in place beforehand ensures that only serious bidders “ready to hit the ground running” will participate in this critical process.

Finally, in terms of bidder qualifications, it should be noted that, while supportive of the ACA proposal with respect specifically to the structure of the bidding process as noted above, NTCA disagrees with ACA in terms of bidder eligibility. Instead, as noted above, NTCA encourages each and every would-be CAF Phase II bidder to start now in seeking to obtain designation as an ETC in each state in which it would intend to provide supported services. While the filing of a Form 477 for three consecutive years may certainly be instructive or informative as one part of an evaluation of the reliability and sustainability of bidders, it is not sufficient. The ETC designation process is a tried and true – and legally required – mechanism that has long protected consumers and promoted the concept of universal service. In particular, Form 477 filings alone fail to provide the Commission with sufficient insight into the managerial, technical, and financial experience of those seeking to undertake the complicated and expensive task of deploying broadband networks to rural consumers that existing providers have been unable or unwilling to serve. The assessment of bidders’ applications (in addition to requiring ETC designation prior to the submission of an application) should place substantial value both on the prior track record of performance of the applicants in question and their demonstrated capability to deploy and operate on an ongoing basis networks that can offer consumers “an evolving level of telecommunications service” both in the near-term and over the long-run. Objective yet verifiable criteria such as experience in building and operating voice and broadband networks in rural areas and a record of leveraging high-cost support to do so can provide the Commission with the assurance that limited CAF Phase II dollars will have the greatest and most sustainable impact in terms of meeting the universal service goals of this program both in the near-term and over the long-haul.

Sincerely,
/s/ Michael R. Romano
Michael R. Romano
Senior Vice President – Policy

cc: Carol Matthey
Steven Rosenberg